

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

4 IN RE: . Case No. 05-44481 (RDD)
5 DELPHI CORPORATION, et al, . New York, New York
6 Debtors. . Thursday, October 27, 2005
6 . 10:35 a.m.

TRANSCRIPT OF OMNIBUS HEARING
BEFORE THE HONORABLE ROBERT D. DRAIN
UNITED STATES BANKRUPTCY JUDGE

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	<u>I N D E X</u>	<u>Page</u>
1		
2		
3	<u>INTERIM COMPENSATION ORDER</u>	
4	(Item No. 1 on Agenda)	
	Form of Order Discussion/Adjourned to 11/4/05	6
5	<u>RETENTION OF DEBTORS' PROFESSIONALS</u>	
6	(Item Nos. 2 through 8 on Agenda)	
	Form of Order Discussion/Adjourned to 11/4/05	7
7	<u>RETENTION ORDINARY COURSE PROFESSIONALS</u>	
8	(Item No. 9 on Agenda)	
	Form of Order Discussion/Adjourned to 11/4/05	8
9	<u>PROCEDURES FOR CLAIMS AND SECURITIES TRADING</u>	
10	(Item No. 10 on Agenda)	
	Adjourned to 11/29/05	9
11		
12	<u>RETENTION OF FINANCIAL ADVISOR ROTHSCHILD, INC.</u>	
13	(Item No. 11 on Agenda)	
	Adjourned to 11/29/05	10
14	<u>CONTINUATION OF INSURANCE FINANCING AGREEMENTS</u>	
15	(Item No. 12 on Agenda)	
	Motion for Order by Mr. Butler	10
	Approval by the Court	10
16	<u>CONTINUATION OF HSBC PURCHASE CARD</u>	
17	(Item No. 13 on Agenda)	
	Motion for Order by Mr. Butler	10
18	Approval by the Court	11
19	<u>REJECTION OF PACIFIC RIM LEASE</u>	
20	(Item No. 14 on Agenda)	
	Motion for Order by Mr. Butler	11
	Approval by the Court	12
21	<u>SALE OF DE MINIMIS ASSETS</u>	
22	(Item No. 15 on Agenda)	
	Motion for Order by Mr. Butler	12
23	Approval by the Court with Modifications	16
24	<u>INTERIM/FINAL ORDERS RE: UTILITIES</u>	
25	(Item No. 16 on Agenda)	
	Motion for Order by Mr. Butler	16
	Approval by the Court with Modifications	19

1 I N D E X
2 (Continued)

	<u>Page</u>
3 <u>REJECTION OF LICENSE AGREEMENT/DURASWITCH</u>	
4 (Item No. 17 on Agenda)	
4 Motion for Order by Mr. Butler	19
4 Approval by the Court	20
5 <u>CONTINUED USE OF CASH MANAGEMENT, ET CETERA</u>	
6 (Item No. 18 on Agenda)	
7 Motion for Order by Mr. Butler	20
7 Response by Mr. Rosenberg	21
7 Argument	22
8 Response by Mr. Somerstein	24
9 <u>DIP FINANCING</u>	
10 (Item No. 19 on Agenda)	
10 Motion for Order by Mr. Butler	27
10 <u>J.P. Morgan/Citibank Financing</u>	
11 By Mr. Butler	28
11 Response By Mr. Brilliant	42
12 <u>Intercompany liens, Carve-outs, Waivers, et cetera</u>	
13 By Mr. Butler	
13 44	
14 Clarification by Ms. Bedell for DIP Lenders	45
14 Clarification by Mr. Ziman	55
15 Response by Mr. Rosenberg	56
15 Response by Mr. Ziman	57
16 Response by Mr. Bienenstock	60
17 <u>Objections from Set-off and Lien claimants, et cetera</u>	
18 By Mr. Butler	63
18 Objections argued by Mr. Mears	64
18 <u>Court Decision</u>	70
19 Objections argued by Mr. Newman	71
20 <u>Alternative Dispute Resolution Objections, et cetera</u>	
21 By Mr. Butler	73
21 Response by Mr. McDowell	79
22 Response by Mr. Fusco	81
22 Response by Mr. Reisman	83
23 Response by Mr. Toering	86
23 <u>Court Decision</u>	87
24 <u>Evidentiary Hearing</u>	89
25 <u>Approval by the Court with Modifications</u>	105

2 THE COURT: Please be seated. All right.

3 Delphi Corporation?

4 MR. BUTLER: Your Honor, good morning. My name is
5 Jack Butler from the law firm of Skadden, Arps, Slate, Meagher
6 & Flom, L.L.P., here with my partner Kayalyn Marafioti and our
7 special counsel Doug Bartner, for purposes of our October 27th
8 omnibus hearing. This is the monthly omnibus hearing for the
9 month of October.

10 Your Honor, we have filed and served a proposed
11 omnibus hearing agenda, and with Your Honor's permission, we'll
12 follow that agenda.

13 THE COURT: Okay.

14 MR. BUTLER: Your Honor, the first item on that
15 agenda, Item No. 1, is the interim compensation order at Docket
16 No. 11. We have been in discussions with the creditors'
17 committee and with the United States Trustee regarding the form
18 of that order.

With respect to the interim comp arrangements we believe we have a proposed form of final order. We're going to be dealing with that over the next week, ask Your Honor to take that up at the November 4th adjourned hearing so we can get a sign-off from the U.S. Trustee on the form of order.

24 THE COURT: Okay. And are those same people talking
25 about, you know, a fee committee?

1 MR. BUTLER: Yes, Your Honor. And, in fact, the
2 United States Trustee observed to us that even under the
3 interim comp order the first monthly statements in this case
4 aren't generated until November 30th, and that the November
5 20th omnibus hearing would be an appropriate time to take that
6 up. And they wanted to consider certain matters further and
7 consult with the committee.

8 THE COURT: Okay.

9 MR. BUTLER: So that portion, Your Honor -- the fee
10 committee portion would come up at the November 29th hearing.

11 THE COURT: Okay.

12 MR. BUTLER: Your Honor, the next items, and I'll just
13 take Items 2 all the way through Item 8, are retention
14 applications for the debtors' professionals that have been --
15 pursuant to which interim orders have been entered.

16 The creditors' committee is in the process of
17 completing their review of these things. They were appointed
18 last Monday, Your Honor, a week ago. I should report to the
19 Court the following appointment in an organizational meeting
20 held I think on the 17th of October.

21 We held our first full committee meeting with the
22 committee on the 25th, this Tuesday, the debtors did, and had a
23 full agenda with the committee.

24 The committee asked us if we would adjourn all of
25 these to November 4th so they can complete their review, given

1 the press of other matters. The U.S. Trustee has also advised
2 us that they expect to have completed their review for purposes
3 of a final order on November 4th.

4 THE COURT: All right. Okay.

5 MR. BUTLER: Your Honor, the next item on the agenda
6 is Item No. 9. This is the ordinary course of professionals
7 item.

8 We have had discussions with the United States Trustee
9 about the OCP order. Essentially, the form of relief that
10 we're going to request in this motion is going to change. And,
11 rather than having a multi-tiered order, there will be an order
12 that will basically say that any professional who exceeds
13 50,000 a month or \$500,000 for the aggregate case will have to
14 file a retention application and go through the normal 327(a)
15 or (e) approach. Anyone less than that can be governed by the
16 OCP order. We're working on the final form of order with the
17 U.S. Trustee and intend to present it to Your Honor at the
18 November 4th adjourned hearing.

19 THE COURT: All right.

20 MR. BUTLER: Your Honor, Number 10 on the agenda is
21 the claims trading -- final hearing on the claims trading
22 motion. This is the motion that is intended to help preserve
23 our NOL and other -- our tax positions and other asset
24 position.

25 This, by agreement with the Cleary firm, was moved to

1 the November 29th hearing. There is continued working on
2 trying to work on a consensual final order.

3 THE COURT: Okay. That's fine.

4 MR. BUTLER: And, finally, Your Honor, also on the
5 agenda is Number 11 is the Rothschild retention. This is --
6 has a success unit. It's subject to the forty-five-day rule
7 here in the Southern District and it will, therefore, be heard
8 for a final hearing at the November 29th omnibus hearing.

9 THE COURT: Right.

10 MR. BUTLER: Your Honor, now moving on to the matters
11 that we believe are uncontested, agreed, or otherwise resolved,
12 the first matter is Item No. 12. This deals with insurance
13 financing.

14 It's our motion seeking authority to continue honoring
15 prepetition insurance premium finance agreements and related
16 matters.

17 Your Honor, we request authorization from the Court to
18 continue to honor obligations to an entity called Kenwal, Inc.
19 (phonetic), pursuant to a prepetition insurance premium
20 financing agreement. We have reviewed -- the terms of the
21 agreement have been provided to the creditors' committee.
22 Neither the committee nor any of the party has objected to the
23 relief requested. Unless Your Honor has any questions, we rely
24 on the papers.

25 THE COURT: No. I reviewed the papers. Unless --

1 does anyone else want to be heard on this matter? Hearing no
2 one, and based on my review of the motion, I'll approve it.

3 MR. BUTLER: Thank you. Your Honor, the next matter,
4 Matter No. 13, is our motion to assume the HSBC purchase card
5 and to continue to use the purchase card agreement and travel
6 card agreement with HSBC Bank USA National Association.

7 And, Your Honor, essentially, we have in this
8 agreement asked to assume and take various actions with respect
9 to the agreement that we use to deal with about 1,080 of our
10 employees who use this as a purchase card through our plant
11 facilities in the U.S. and elsewhere, and about 12,500 of our
12 employees who use this card in the ordinary course of the
13 debtors' business in connection with travel-related expenses.

14 Again, Your Honor, there's a variety of relief sought
15 in the motion with respect to HSBC. We assume already this
16 matter has been presented to the committee and other parties.
17 No one has filed an objection. Unless Your Honor has any
18 particular questions, we'd ask the -- we have authority to
19 assume and take the actions outlined in the motion.

20 THE COURT: The debtors couldn't get a replacement
21 card?

22 MR. BUTLER: Your Honor, we didn't -- candidly, we
23 didn't seek to try to get a replacement card here. The fact is
24 that trying to go through a process of taking all these cards
25 out, reissuing all the other cards, we actually, as I think I

1 explained to Your Honor the first day, we pre-funded a good
2 portion of this going into this. So I don't believe as of the
3 -- well, there was a potential preference claim here which we
4 talked to the -- advised the committee about. I don't think
5 there was anything owed as of the petition date --

6 THE COURT: Okay.

7 MR. BUTLER: -- the way in which we structured this
8 particular transaction.

9 THE COURT: All right. And this is generally paid --
10 these payments are made generally by the debtors pretty
11 regularly?

12 MR. BUTLER: Yes, Your Honor. They're paid -- made in
13 a monthly basis. And some of these are made directly and
14 others of them may be reimbursed through expense agreements.
15 But they're all in the process -- this is basically used for
16 two purposes: For travel and in our plants when people need --
17 and facilities people need to go out and get some de minimis
18 sort of asset kind of -- that's how they go out and acquire
19 them.

20 THE COURT: Okay. Does anyone want to be heard on
21 this motion? All right.

22 Based on my review of the motion and Mr. Butler's
23 comments and there being no objections, I'll approve it.

24 MR. BUTLER: Thank you, Your Honor.

25 Your Honor, the next motion is -- matter on the agenda

1 is Matter No. 14. This is a motion seeking authority to reject
2 what we called a "Pacific Rim lease."

3 And in this motion what we're trying to accomplish, we
4 no longer need to use the master lease agreement with Pacific
5 Rim, Inc. This is a master agreement which involved the lease
6 of assorted machinery, equipment, and other items. And we no
7 longer need to use these items, particularly because of the
8 reasons set forth in the motion having to do with our
9 operations in Foley, Alabama.

10 Your Honor, as a result of the debtors' exercise of
11 its business judgment, we have determined it's appropriate to
12 reject this lease at this time. There have been no objections
13 filed either by the lessor, by the committee, or any other
14 party.

15 THE COURT: Okay. I reviewed the motion and it
16 appears to be well within the debtors' business judgment, so
17 I'll approve it.

18 MR. BUTLER: Thank you, Your Honor.

19 Your Honor, Matter No. 15 on the agenda is our motion
20 for an order to sell certain de minimis assets free and clear
21 of liens. It's essentially -- and to pay market rate broker
22 commissions. This is essentially a de minimis procedures order
23 that allows us to operate in the ordinary course of business
24 with the disposition of de minimis assets.

25 There's a proposed procedure here that would require

1 that we send notice in advance to the U.S. Trustee, the
2 unsecured creditors' committee, the DIP lenders, any one holder
3 of a lien on the assets proposed to be sold, and any other
4 known interested party with respect to the particular asset
5 involved.

6 There is a procedure that requires that if we don't
7 get a written objection or a request for additional time within
8 five business days, we can complete the transaction. And,
9 otherwise, if there is an objection raised and we can't resolve
10 it, we need to come to court and deal with that resolution.

11 There is a purchase price limitation here of greater
12 than -- anything greater than \$10 million that requires to come
13 to court. Given a company of our size with our asset base, we
14 think that's an appropriate level.

15 We have agreed with the creditors' committee, our
16 financial advisors of the debtors and the committee working
17 together on a protocol so that the committee is comfortable in
18 how that \$10 million is analyzed. You know, Mr. Rosenberg has
19 used to me the example of, you know, you've got a hundred-
20 million-dollar asset on the books at book value and you're
21 going to get \$10 million for it, that's probably not the kind
22 of transaction that should be a de minimis asset sale.

23 THE COURT: That's definitely not. Actually, I put in
24 here, because the 10 million only works if it's an arm's length
25 market-driven sale. So I put in without further Court

1 approval, and I added the words, "arm's length sale." And then
2 you and the committee can work out beyond that. But the debtor
3 has to be comfortable it's an arm's length sale.

4 That's separate and apart from it not being to
5 insiders.

6 MR. BUTLER: Right. And, Your Honor, on that point,
7 we would work out a protocol with our financial advisors. I
8 think we've had pretty good success even in the last week or
9 ten days on our -- the financial advisors working very closely
10 together -- I mean professionals for the debtors and the
11 committee working closely together.

12 In the unlikely event that we couldn't agree on a
13 protocol, I said to Mr. Rosenberg, you can come back to court
14 here with respect to this order subsequently. But I can't
15 imagine that's the -- would be the case.

16 THE COURT: Okay. Anyone want to -- I had a couple of
17 other comments on this. Maybe I should give you those before I
18 hear from anyone.

19 In Paragraph 4 I think the broker's affidavit should
20 include an affirmation by the broker that the commission is at
21 or lower than in his or her reasonable belief market
22 commissions for similar sales.

23 And then Paragraph C, which is the paragraph that
24 gives a right to come -- whoever is on the call, it's not on
25 mute. Please put it on mute or get off the call.

1 Paragraph C is a paragraph that lets people go to
2 court if their -- if you can't resolve an objection. And I
3 just want to make it clear that the broker would be routine
4 nunc pro tunc given the rules in this Circuit. There shouldn't
5 be any concern on the broker's part about that.

6 And then, lastly, on Paragraph 6, which is the
7 paragraph that says that the notice procedures shall not apply
8 to sales of assets that involve an insider, I also added this
9 concept, and you can -- if you're not comfortable with the
10 language, you can adjust it. But what I had in mind was:

11 "Or any sale that because of the integral nature of
12 the asset would require the debtor subsequently to sell
13 additional assets for an aggregate sum in excess of 10
14 million."

15 And that wouldn't be covered by this, either. You'd
16 have to go to court for that.

17 MR. BUTLER: I understand that, Your Honor. And I
18 should point out we also agreed to give counsel to the debtors
19 prepetition credit facility notice of these transactions.

20 THE COURT: Right. Okay. So -- okay. So does anyone
21 else -- does anyone want to be heard on this motion?

22 UNIDENTIFIED ATTORNEY: Your Honor, only to say that
23 we were troubled by the ten-million-dollar number for the
24 reason Mr. Butler said. But I will report that I think that
25 FTI, the debtors' financial advisor, and Mezero (phonetic), the

1 committee's financial advisor, have already established an
2 excellent working relationship and I have every anticipation
3 that we will be able to work through what \$10 million really
4 should mean, particularly in the context of Your Honor's
5 comments.

6 THE COURT: Okay. And, again, if for some reason the
7 committee or the banks or anyone else feels this program isn't
8 working as intended, then you can come back to court and seek
9 modification of the order.

10 UNIDENTIFIED ATTORNEY: Very good, sir. Thank you.

11 THE COURT: Okay. But with those changes and caveats,
12 I will permit it.

13 MR. BUTLER: Thank you, Your Honor.

14 Matter No. 16 on the agenda is a utilities motion.
15 This is our -- the final hearing on our motion for an interim
16 and final order under Section 366 to deal with putting
17 essentially alternative dispute resolution procedures and to
18 deal with utility deposits, perhaps the last of this kind
19 drafted this way that Your Honor will be hearing. Given the
20 changes in the new Code, I think there will be, as I mentioned
21 at the first day hearings, I think there will be a slightly
22 evolved version of these procedures that will come back, even
23 under the new statute.

24 But as to these matters, we have an alternative
25 dispute resolution process here that essentially tries to work

1 out the deposit issue between the utility and the company and
2 sort of that be adequate assurance issues prior to coming to
3 court.

4 There were very few objectors to that relief. We did
5 serve this as required by Your Honor in the interim order.

6 There were very few objectors that -- overall that filed an
7 objection. And with respect to those objectors, we were able
8 to resolve one or two of the objections and, more importantly,
9 all the other objectors agreed that they wanted to continue to
10 work on this with the debtors and ask that -- and agreed that
11 the order could enter on a final basis as to all others.

12 But then -- and we would continue to work with them
13 and deal with them on November 29th if we can't come to a
14 satisfactory resolution.

15 The form of black-lined order we submitted, Your
16 Honor, reflects that agreement.

17 THE COURT: Okay. I had a couple of changes to this
18 one, also, consistent with how I've done these. And I know
19 that different courts have different procedures for this type
20 of motion.

21 They basically have to do with the provision that you
22 have in here in Paragraph 6 and in Paragraph 9 which I think
23 works for an interim order, but not for a final order. The
24 provision says that unless the utility makes a request within
25 twenty-five days of the receipt of this order they can't make

1 any other requests.

2 And since I think the statute contemplates changed
3 circumstances and the utility's rights and other changed
4 circumstances, I would change that in the third line. So
5 instead of saying:

6 "Within twenty-five days of the date of service hereof
7 request deadline," I just said:

8 "Based on materially changed circumstances from the
9 date hereof."

10 A similar concept is baked into Paragraph 9 for the
11 utilities that you discover in the future that you might have
12 had that didn't get notice of this.

13 MR. BUTLER: Yes, sir.

14 THE COURT: And it -- again, consistent with the case
15 law on this pre-October 17th in the Circuit, this order
16 provides that the utility companies can't unilaterally
17 terminate service, even the ones that you discover in the
18 future for -- unless there's a court order. But I think they
19 should be free to come in to ask for that type of relief.

20 The other change is in Paragraph 7 it gives the
21 debtors forty-five days to set up a determination hearing. And
22 I've just added:

23 "Consistent with the Court's Case Management Order,
24 the utility company may seek an earlier hearing."

25 In all likelihood, it probably would be within that

1 time frame anyway, but if there's some emergency they could do
2 that.

3 But seeing no objections and hearing none, I'm going
4 to approve it on that basis.

5 MR. BUTLER: We'll make those changes, Your Honor, and
6 submit the order.

7 THE COURT: Okay.

8 MR. BUTLER: Thank you.

9 Your Honor, the next matter on the agenda is Matter
10 No. 17. This is a motion for an order authorizing the
11 rejection of a license agreement with DuraSwitch Industries,
12 Inc.

13 Again, Your Honor, another rejection motion dealing
14 with in this case a license agreement that was entered into in
15 April of 2000. It was an exclusive license agreement for
16 technology that facilitated electrical connections within a
17 vehicle. And, rather than go through a litany of what's in the
18 motion or on a presentation letter, the basic punch line in
19 this one is that we end up -- Counsel Nagerse (phonetic) which
20 have agreed on a brief form of rejection order, we have -- and
21 we have submitted it to the Court.

22 THE COURT: Okay. I reviewed the motion. It's
23 clearly within the debtors' business judgment and also the
24 revised order, which looks fine.

25 MR. BUTLER: Thank you.

1 THE COURT: Does anyone want to be heard on this? All
2 right. Hearing no one, I'll approve it for the reasons stated
3 in the motion.

4 MR. BUTLER: Thank you, Your Honor.

5 Your Honor, the next matter on the agenda is the final
6 hearing on our cash management motion. There were two
7 objections that were filed. Both of them, perhaps it shouldn't
8 be surprising to any of us, dealt with the same thing we talked
9 about at the interim hearing, which was that pesky paragraph
10 dealing with what should happen in the event that in
11 intercompany transfers there is a net borrower and a net lender
12 and what the relationship should be between the two entities
13 within the debtors' system.

14 Your Honor may recall that the subject -- the
15 discussion and the debate at the first hearing had to do with
16 whether that -- there should be an administrative claim and
17 what priority that will have, be it super administrative --
18 super priority or other. That has evolved now into the view
19 that there actually -- it shouldn't be a -- just a claim, it
20 should be a lien.

21 And we have actually -- we've actually entered into an
22 agreement with the Pension Benefit Guarantee Corporation as to
23 the language that's in the order that's acceptable to them. It
24 is a lien. They're the entity that has a control group
25 liability claim against all those entities. And the priority

1 of that lien is determined by the financing order.

2 The creditors' committee has reserved or objected on
3 the issue, I think it was actually a statement that was
4 submitted so I'll call it reserve for the moment, but had
5 raised an issue as to whether that lien ought to have a higher
6 priority. They would prefer the priority be right below the
7 DIP lenders and the DIP financing order calls for that priority
8 to be junior to various categories of claim. It's the DIP
9 lenders, the prepetition lenders and the set-off claimants.

10 That is the only issue I think that exists with
11 respect to the cash management order that I'm aware of. And
12 the -- and my suggestion would be, Your Honor, that we -- the
13 Court reserve on that matter until you hear the DIP financing
14 motion because I think, ultimately, Your Honor is going to be
15 dealing with the DIP financing issues and, depending on how you
16 come out on those, I think Mr. Rosenberg and I will be able to
17 work this one out.

18 MR. ROSENBERG: Yeah.

19 THE COURT: Okay.

20 MR. ROSENBERG: Your Honor, I have no problem as far
21 as Mr. Butler goes. Obviously, the two have to be consistent
22 in terms of the priority of the liens and I will argue
23 passionately for that priority at the appropriate time.

24 THE COURT: Okay.

25 MR. ROSENBERG: We did raise another issue, however,

1 in our statement which was that a lien is only as good as the
2 assets and cash flow backing it up. And we do want and need a
3 mechanism to assure that however it is secured it can be
4 repaid.

5 I would hope that we can do that via some kind of a
6 protocol, but it is not the case that if Your Honor simply
7 grants a lien we go away happy.

8 THE COURT: Right. I actually had the same concern.
9 And it comes up in a cash management context. But there is
10 some point where intercompany transfers really do turn into
11 serious lending decisions. Maybe that never happened in this
12 case because everything balances out.

13 But there should be a process whereby the appropriate
14 professionals for the committee are kept up to speed on the net
15 balances and I guess also, you know, the same type of
16 information that a board would consider in continuing to
17 authorize its debtor to extend credit to another debtor. That
18 is, I guess, the financial health of the other debtor.

19 I expect that such a analytical process will be
20 undertaken by each credit provider anyway. So I would hope and
21 expect really that whether it's the committee's -- a particular
22 person like the committee's financial advisor or counsel will
23 be kept informed of those decisions on a, you know, a
24 reasonably current basis, like every month or maybe even every
25 two weeks.

1 And if there's any -- particularly, what I have in my
2 mind is any large increase in exposure by an intercompany
3 lender or substantial decline in the fortunes of an
4 intercompany borrower that would raise a red flag about
5 lending.

6 MR. BUTLER: Your Honor, on that part, we -- I agree
7 with Mr. Rosenberg. I don't view this protocol as being a
8 difficult one for us to resolve. We counted on this being part
9 of the monthly reporting package to the committee.

10 Your Honor should know we've already established
11 between us a consensual schedule of meetings that normally go
12 out all the way to next March in terms of dates. We're meeting
13 every month as a full group of debtors and committee
14 representatives. And we'll make sure this is part of the
15 monthly reporting package.

16 THE COURT: Okay. But I'm serious about this. I
17 don't think there should be a sort of an automatic yes by a
18 particular debtors' management which overlaps, obviously, to a
19 borrowing request. I mean, it's not just simply, we need, you
20 know, \$10 million; okay, here it is. There needs to be some
21 analysis of the ability to repay that.

22 MR. BUTLER: All right. Well, Your Honor, and I think
23 tempered with that is the fact that the -- you know, these are
24 -- as you look at these inter-companies, the vast majority of
25 them are wholly owned. And the benefit of the -- of that

1 enterprise inures to the overall benefit of the business.

2 THE COURT: Well, that's -- you know, it depends on
3 who the creditors are. If there's a lot of overlapping debt
4 then maybe it's not much of an issue.

5 MR. BUTLER: And, in fact, Your Honor, the -- that I
6 think is -- and we'll -- this is for another day. But the
7 reality is the -- we'll eventually get to a point in this case
8 where we'll look at where all the debt is. The majority of the
9 debt, say the liens that attach from the banks and now some of
10 the replacement liens granted in the proposed financing order
11 and the PPGC's position. The majority of the other debt of the
12 company is not at these entities.

13 THE COURT: Well --

14 MR. BUTLER: That will be for another day.

15 THE COURT: -- that should make the protocol easier.
16 I mean, there's no reason the committee needs to get into this
17 in a great deal of detail if, in fact, no creditors are even
18 potentially hurt by a loan from one company to another.

19 So let's reserve on the lien priority issue until the
20 discussion of the DIP. The language is the same in both
21 orders, right?

22 MR. BUTLER: Yes, Your Honor.

23 MR. SOMERSTEIN: Good morning, Your Honor. Good
24 morning, Your Honor. Mark Somerstein, Kelley Drye, for Pension
25 Benefit Guarantee Corporation.

1 Your Honor, I would just note that PPGC is not a
2 member of the creditors' committee and we'd appreciate the
3 opportunity to participate with Mr. Butler and his team and Mr.
4 Rosenberg and his team in reviewing the protocol so that we
5 could see the information on the intercompany borrowings.

6 THE COURT: Okay.

7 MR. SOMERSTEIN: I'm sure that's something that can be
8 done.

9 THE COURT: Well, maybe -- yeah. Again, I would just
10 urge you to focus in on the borrowers that are of concern to
11 your client.

12 MR. BUTLER: Your Honor, I know the PPGC and we're
13 actually at some point -- we're waiting on that. We've been
14 working with the PPGC in terms of their efforts to seek
15 membership on the committee.

16 But we don't want to get in a position of saying what
17 the committee gets to do, other people get to do.

18 THE COURT: No. I agree with that. I agree with
19 that. But I think this is a specific issue that really only
20 the PPGC is focused on besides the committee. And if it can be
21 done in a way that really focuses in on their obligors in an
22 efficient way, then I think you could do that.

23 MR. BUTLER: That's exactly what we're talking about,
24 Your Honor. Thank you.

25 THE COURT: Okay.

1 MR. BUTLER: Your Honor, that brings us to the only
2 other matter on the agenda, Matter 19, which is the DIP
3 financing hearing which is contested.

4 Your Honor, we'd like to ask for a brief recess so
5 that we can set up for the hearing and try and resolve a few
6 additional issues. You know, no more than thirty minutes,
7 hopefully less.

8 THE COURT: Okay. So why don't I come back here at
9 11:30?

10 MR. BUTLER: Thank you, Your Honor

11 THE COURT: Okay. Thanks. The operator is reminding
12 me that unless you turn your Blackberries off, your words,
13 which I know are very important to you, are not going to be in
14 the transcript. And when I say "you," I mean everybody. I
15 know that kind of makes you feel like you're missing, you know,
16 a key item of clothing or something, but it can wait for half
17 an hour. The messages will still be there when we leave the
18 courtroom.

19 (Recess taken at 11:04 a.m.)

20 AFTERNOON SESSION

21 (Proceedings resume at 1:51 p.m.)

22 THE COURT: Please be seated. Okay. We're back on
23 the record in Delphi Corporation.

24 MR. BUTLER: Your Honor, thank you for allowing us to
25 take an extended lunch recess. I hope the Court will believe

1 it was constructive; the debtor certainly believed it was.

2 With the help of a number of our principal
3 stakeholders, we've been able to resolve a number of the
4 objections to the DIP financing motion, which is the next
5 matter on the agenda and our last matter for today, and the
6 resolution will also resolve Matter 18, the cash management
7 motion that has been reserved.

8 THE COURT: Okay.

9 MR. BUTLER: Your Honor, what I'd like to do is
10 reorganize the hearing slightly, and report to the Court on a
11 number of the settlements, and then move to an abbreviated
12 evidentiary record.

13 THE COURT: All right.

14 MR. BUTLER: I believe we've resolved all of the
15 objections that went to the issues as to whether there should
16 be a DIP financing put in place, I think there are -- and I
17 think we have addressed the majority of objections that relate
18 to adequate protection. I believe that some of the set-off
19 claimants may still raise issues; and I believe Bank of
20 America, as an aircraft lessor, may raise certain issues.
21 Those issues, I don't believe, based on a review of the
22 objections, go to the heart of whether or not the -- you know,
23 we've complied with 364(d) and those kinds of issues.

24 So what I propose to do is describe in general terms
25 the settlements that have been reached, so that everyone is

1 informed. I also am able to answer any questions the Court has
2 and then move to an evidentiary record, the admission of
3 exhibits, and a proffer for the Court. We have the witnesses
4 available, but I don't know, unless Your Honor wants to get
5 live testimony, whether anyone else will seek it.

6 THE COURT: Okay. Well, I'll take a proffer, and then
7 I'll just see if someone wants to cross-examine, then they can
8 do that.

9 MR. BUTLER: So I'm -- this is, as the Court knows, a
10 motion that we have filed; this is the final hearing before the
11 Court on approval of our authority to obtain and move forward
12 on \$2 billion of committed DIP financing from J.P. Morgan Chase
13 Bank, NA, as administrative agent, and Citicorp USA, Inc. as
14 syndication agent, along with a group of other financial
15 institutions that have been arranged by J.P. Securities, Inc.
16 and Citigroup Global Markets, Inc.

17 The DIP facility that is before the Court today
18 included both a two-hundred-and-fifty-nine-dollar (sic) term
19 loan and a 1.7-billion-dollar revolver. There's a sub-limit,
20 as I advised the Court at the interim hearing, about \$325
21 million for letters of credit. And under the terms of this
22 financing, it would prime approximately \$2.59 billion worth of
23 prepetition revolver and term loan facilities under the terms
24 of the order.

25 And we also have dealt with in this order how set-off

1 and related rights, including recruitment issues, would be
2 addressed going forward in this case in an orderly manner.

3 It is the company's view, Your Honor, that we have hit
4 what we believe to be in a very complex set of issues what I'll
5 call "the sweet spot" of an order that balances the interests
6 of all parties here in an orderly manner and allows the company
7 to move forward in these cases.

8 Your Honor, there was only one objection that was
9 filed, and I should point out -- if I may, to begin with, Your
10 Honor, I'll move the admission of these exhibits at the
11 evidentiary portion of this, but I think it could be useful to
12 make some references now. May I present an exhibit book to the
13 Court?

14 THE COURT: Sure.

15 MR. BUTLER: Your Honor, the transaction that we're
16 asking the Court to approve is a transaction that is evidenced
17 by several documents, and they are marked as Debtors 1, 2, and
18 3: A commitment letter; a post-petition DIP financing
19 agreement, which is Exhibit 2, and Exhibit 2A, which is a first
20 amendment to the revolving credit term loan and guarantee
21 agreement, which includes an agreement as to the borrowing-base
22 element of this transaction.

23 We have also filed with the Court a proposed financing
24 order, which has been black-lined on several occasions, and
25 which we will suggest some other changes to in this hearing.

1 But the current form of that order, in terms of black-lined, is
2 at Exhibit 4; that's the black-line which represents the
3 current state of the order, subject to the comments that we
4 made on this record.

5 THE COURT: But are those documents are the same as
6 the ones provided in my chambers, I guess last night or this
7 morning?

8 MR. BUTLER: Yes, Your Honor.

9 THE COURT: Okay.

10 MR. BUTLER: There was a proposed order attached to
11 the original motion; that was updated with a final financing
12 order that was filed with our omnibus reply, it was an exhibit
13 to the omnibus reply. It was black-lined against the Court's
14 interim order. We then had further negotiations, and late last
15 evening we reached agreement with the post-petition lenders,
16 the prepetition agent, General Motors Corporation, and the
17 company about the form of order. We black-lined that, and we
18 served it out last night, overnight. We now had filed with the
19 Court, we put it out on the docket, we put it out on the
20 website, and we served all the parties with it overnight.

21 THE COURT: Okay. Okay.

22 MR. BUTLER: There will be some changes to that order
23 today, although they are relatively discreet, to resolve some
24 of the issues that we have before the Court. So the documents
25 we're asking Your Honor to approve would be the loan agreements

1 on 2 and 3 -- you know, 2 and 2A, and the financing order as we
2 make changes on the record today.

3 THE COURT: And the loan agreements reflect the
4 amendments that went out last night, too?

5 MR. BUTLER: Yeah. Your Honor, yes. There were no --
6 the loan agreements didn't really need much in the way of
7 changing. This was the other issues -- the issues -- there
8 were issues more about priorities and relationships than
9 anything else.

10 THE COURT: Okay.

11 MR. BUTLER: Your Honor, also, Exhibit 28 and 29 to
12 Debtors 28 and 29 set forth a summary of all of the objections
13 that were filed as of 12 noon yesterday, and the debtors' views
14 on those. Those actually were Exhibit 28, Debtors' Exhibit 28
15 is actually -- was also Exhibit B to our omnibus reply, and
16 Debtors' 29 was Exhibit C to our omnibus reply. It basically
17 laid out the objections that had been, to the debtors'
18 perspective, timely filed, and some others that had not been
19 timely filed, but which we were aware of prior to the 12 noon
20 deadline we had with chambers to submit our omnibus reply.

21 Of all the objections listed in Debtors' 28 and 29, I
22 believe the only objection that went to the issue solely of
23 whether or not the debtors could enter into this priming
24 facility was the objection filed by the self-styled ad hoc
25 committee of prepetition lenders; the group we refer to as the

1 "Goodwin Procter Group," represented by Mr. Brilliant and his
2 colleagues, which had filed objections really alleging,
3 essentially, that the company couldn't sustain its burden under
4 Section 364 of the bankruptcy code; and, further, even if it
5 could, that the company hadn't offered adequate protection.

6 In connection with that transaction, with those
7 objections we also filed a reply, and there are a couple of
8 items and some changed circumstances that I want to reflect on
9 this record, so the record here is complete.

10 In connection with that transaction -- and that is the
11 DIP lending, along with the priming position to the -- with
12 respect to the \$2.59 billion of prepetition debt, there was a
13 notice, there was a position that the prepetition agent took,
14 and that was communicated to all of the members of the
15 prepetition bank group, and the members of the prepetition bank
16 group then took votes on two discreet elements which are
17 relevant to today, and perhaps relevant to the case.

18 And the notice that the prepetition agent sent out is
19 Debtors' 22, which was the actual notice, in which the debtor -
20 - the prepetition agent took two positions:

21 First, it took a position that, absent instruction to
22 the contrary, it was not going to object to the debtors'
23 request to enter into this transaction, and it asked the
24 members of the group to give a -- reflect on that.

25 And, second, it asked -- or it told the group that it

1 intended to inform the debtors that the debtors would not be
2 able to renew LIBOR-based interest contract arrangements, as
3 they expired, I believe beginning on or around November 15th of
4 this year, and also sought direction from the lenders on those
5 issues.

6 With respect to the first matter, there were 42.88
7 percent of the members --

8 THE COURT: I'm going to interrupt you just for a
9 second. Please turn off your Blackberries. Every time that
10 sound, it sounds like a little bee buzzing, the transcript gets
11 interrupted by your Blackberries.

12 Okay. Go ahead, Mr. Butler.

13 MR. BUTLER: Okay. Your Honor, in that vote that was
14 taken, 42.88 percent of the holders of the prepetition debt
15 affirmatively agreed with the position of the -- of the
16 prepetition agent not to object to this transaction.

17 Approximately 14 percent of the holders objected and directed
18 the agent to object to this transaction, and approximately
19 somewhere in the neighborhood of 33 percent did not vote, but
20 under the terms of the solicitation from the agent were deemed
21 to have consented to the agent's approach, not consented to the
22 priming, but to the actions to be contemplated by the agent,
23 which meant that, essentially, about 86 percent of the bank
24 group concurred or are deemed to have concurred with the
25 agent's decision not to object to this transaction.

1 However, with respect to the issue of ADR -- and this
2 is different than what was reflected in our papers, because we
3 had different information and it was incorrect, and I want the
4 record to be correct -- 56 percent of the members of the bank
5 group concurred with the agent's determination to no longer
6 permit LIBOR agreements, LIBOR-based interest rate agreements
7 with the debtors. And the balance did not vote, but were
8 deemed to have concurred under the terms of the solicitation.
9 So, essentially, at least as far as -- insofar as the
10 prepetition agent was concerned, there was consensus among the
11 bank group that the agent would inform the debtors that, when
12 our LIBOR-based contracts expire on or about November 15th,
13 that they would not seek to renew them.

14 Now the debtors' position is that that action may or
15 may not be enforceable under the terms of that agreement, and
16 given the fact we're in Chapter 11 at the moment. And therein
17 obviously lies one of the -- one of the issues that ultimately
18 may need to be determined by this Court. But it is, I think, a
19 significant, materially changed fact from the state of the
20 papers for the Court that there was unanimous consensus, at
21 least deemed consensus, among the prepetition holders to move
22 to an ABR rate.

23 Now the ABR rate, Your Honor, the difference between
24 the two rates is about 160 basis points; it's about thirty-
25 seven and a half million dollars a year on an annualized basis,

1 something along that way, and additional interest costs. And
2 that would be the contract rate interest. And, Your Honor,
3 those items are discussed in some detail in Debtors' 17, 18,
4 and 19 of the -- in terms of the exhibits that are before the
5 Court, about how those particular transactions work.

6 In addition, there are other claims under the
7 prepetition loan agreement that could, according to at least
8 some holders of the prepetition debt, be claimed for both
9 default interest, an incremental 200 basis points, and other
10 damages and costs or claims associated with any prepayment or
11 payment of the term loan not in accordance with the terms of
12 that term loan, the prepayment premiums or call premiums or
13 damages or whatever the claims may be.

14 Essentially, what we have entered into an agreement to
15 do, which we understand was, in all respects, any objection by
16 Mr. Brilliant's clients to this hearing, is we have agreed that
17 the -- and I'll read some language in a moment. But
18 essentially we have agreed that the prepetition agent can put
19 up on what's called "Interlinks," the internet-based
20 application, in which it communicates with its two-hundred-and-
21 fifty-odd-plus lenders, an opportunity for any holder to waive
22 its claim on a permanent basis to default interest under the
23 prepetition facility, and waive its claim under any basis to
24 any call premium, prepayment premium, other kind of claim
25 against the company for the prepayment, other than in

1 accordance with the contract, of amounts owed under the
2 prepetition instrument.

3 Anyone who -- any holder which waives those two claims
4 would then be entitled to receive the ABR rate for the balance
5 of this case -- or I should say, for the balance of the time
6 the indebtedness is outstanding in according with the terms of
7 the loan agreement. But the applicable rate paid to that
8 holder would be ABR, as opposed to LIBOR.

9 If someone does not waive those claims, they would be
10 paid as adequate protection the LIBOR right. They would retain
11 their rights to argue that the differential accrued, and we
12 would also fight about whatever other claims they'd have,
13 including default interest claims and other kinds of
14 compensatory claims at the end of the case in the proof-of-
15 claim process. And that was the fundamental agreement reached.

16 We've also agreed under the terms of adequate
17 protection package to pay the reasonable expenses of the
18 prepetition agent and, through the date of this hearing only,
19 the reasonable expenses incurred by Mr. Brilliant's group, in
20 terms of the fees of his firm; the fees and expenses of his
21 firm.

22 THE COURT: In connection with opposing the debt?

23 MR. BUTLER: Correct. But only in connection with
24 that matter, and only through the date of this hearing.

25 MR. BRILLIANT: Your Honor, if I may, just, you know,

1 two minor issues. It's ABR, plus applicable margin, and it's
2 the fees of my firm, and we've hired, you know, conference
3 counsel is going to be de minimis to serve some of the
4 subpoenas with respect to what -- we had a conflict, and that's
5 covered in the order, as well.

6 THE COURT: Okay.

7 MR. ROSENBERG: (Not identified) And, Mr. Butler, I
8 assume that we will get notice of the fee requests and have a
9 say in the reasonableness of both?

10 MR. BUTLER: Absolutely.

11 MR. ROSENBERG: Thank you, sir.

12 THE COURT: Okay.

13 MR. BUTLER: The change to the order occurs, Your
14 Honor, on this particular point, and I want to be specific
15 because this was reviewed with a number of the parties.

16 The change in the order here occurs in Paragraph
17 12(c). And if the Court uses -- it refers to Debtors' 4, and
18 uses that black-line, and it goes to Page 30. And this is the
19 same black-line that's been distributed to virtually everyone
20 in the courtroom, where people have at least had access to it.
21 It's also been -- it's also posted on adelphidocket.com for
22 those participating by telephone.

23 If you go to Page 30, there is an insert that occurs
24 in Romanette iii, about eight, nine lines down. There's a
25 phrase and it says:

1 "And letter of credit and other fees at the non-
2 default contract rate," and then the word -- and then there's
3 the word "applicable."

4 Between the word "rate" and "applicable," there is the
5 following insertion:

6 "Including, at the option of the borrower, the
7 Eurodollar rate, plus the applicable margin."

8 And then on the next -- on the next line, where it
9 says, "Provided that." And after the word "that," we insert
10 the symbol "X paren. X," because we're now going to be a Y in a
11 moment.

12 And then we continue down until just before Romanette
13 iv, and we add there a Y in the hole, and insert the following
14 statements:

15 "Notwithstanding anything to the contrary in this
16 order or the prepetition credit agreement, as to each
17 prepetition secured lender which executes and delivers a
18 written consent in the form to be provided by the prepetition
19 agent (which consent shall be, in form and substance,
20 reasonably satisfactory to the borrower), waiving and releasing
21 all claims, if any, in respect of default interest, and any
22 claims related to the prepayment of the prepetition debt,
23 including any prepayment premium under the prepetition credit
24 agreement, interest shall accrue and be paid by the borrower on
25 the first business day of each month at ADR plus the applicable

1 margin in respect to the prepetition loans held by such
2 prepetition secured lender, from and after the later of: (a)
3 expiry of existing LIBOR contracts, and (b) The delivery of
4 such release and waiver."

5 THE COURT: Okay.

6 MR. BUTLER: And then --

7 THE COURT: Sorry. Go ahead.

8 MR. BUTLER: Your Honor, and then on Page 31, there is
9 a statement that says that, at the end of (e), Paragraph (e) --
10 or excuse me -- Paragraph C, before we go to Paragraph Sub (d),
11 it says, quote:

12 "The debtor shall pay the reasonable and documented
13 fees and expenses of counsel to the ad hoc committee of
14 prepetition secured lenders in connection with the motion."

15 And we have an agreement as to a cap on that, which we
16 have discussed off the record, Your Honor, with the -- with
17 that group, and will obviously share with the parties in
18 interest. But even if -- you know, the reasonable fees cannot
19 exceed a cap, a capped amount.

20 THE COURT: And these are just legal fees, right?

21 MR. BUTLER: Yes, Your Honor.

22 THE COURT: Okay.

23 MR. BUTLER: And then, Your Honor, we would insert an
24 insert there that would say -- also say:

25 "During the pendency of the Chapter 11 case, and

1 except as otherwise set forth in any confirmed reorganization
2 plan, the prepetition debt of any prepetition secured lender
3 shall not be repaid or refinanced in whole, unless it is part
4 of a transaction in which the obligations under the DIP credit
5 agreement and the prepetition credit agreement are repaid or
6 refinanced in whole, or such prepetition secured lender
7 consents to such repayment."

8 THE COURT: Okay.

9 MR. BUTLER: Your Honor, that represents the entire
10 agreement between Mr. Brilliant's clients and the debtors, and
11 further resolves their objection. I'd like Mr. Brilliant to
12 confirm that on the record.

13 THE COURT: Actually, before we do that -- I apologize
14 for interrupting -- because -- well, do I understand right
15 that, if there is the waiver, then the debtor agrees that they
16 won't object to the interest that's being received, except if
17 for some reason you're totally under-secured?

18 MR. BUTLER: Yeah. Your Honor, this is in addition --
19 what we've agreed to is there are other rights that inure to
20 the benefit of the creditors' committee which have been
21 negotiated, and I'll get to in a few minutes. But for example,
22 payments received by -- payments received under this order are
23 subject to re-characterization, and we'll get to that, you
24 know, if under the appropriate circumstances re-
25 characterization is appropriate. That right has been reserved,

1 and Mr. Rosenberg and I will talk about that a little bit later
2 on, so it's --

3 THE COURT: Well, the reason I'm raising this is that,
4 in Paragraph 16 on 38 and 39, in addition to the reservation of
5 rights for the committee:

6 "The debtors reserve their rights to argue the
7 appropriateness of any interest rate charged or claimed by the
8 prepetition secured lenders."

9 And I'm wondering whether -- do you need to have some
10 cross-reference now to this new agreement, at least with
11 respect to the waivers, or not? I -- I'm just raising that for
12 you.

13 MR. ROSENBERG: (Not identified) As always, Your
14 Honor, you're the best lawyer in the courtroom, and you're
15 absolutely right. The only re-characterization would be if we
16 were under-secured; and, otherwise, there would be --

17 THE COURT: Right.

18 MR. ROSENBERG: -- not opportunity to challenge the
19 ADR-plus-applicable-margin rate on a going-forward basis.

20 THE COURT: Well, I know I got a lot smarter when I
21 became a judge, but let's make sure Mr. --

22 (Laughter)

23 THE COURT: -- Mr. Butler agrees that, once the waiver
24 comes in, then you're not going to be able to object.

25 MR. BUTLER: That's correct, Your Honor. That's why I

1 said in my presentation --

2 THE COURT: Okay.

3 MR. BUTLER: -- that's the end, that's the agreement.

4 THE COURT: All right. So you probably have to have
5 some cross-reference then in Paragraph 16.

6 MR. BUTLER: We'll make that cross-reference then,
7 Your Honor.

8 THE COURT: Okay. Okay.

9 MR. BUTLER: Mr. Brilliant?

10 MR. BRILLIANT: Thank you, Your Honor. Allan
11 Brilliant from Goodwin Procter on behalf of the ad hoc
12 committee of prepetition secured lenders.

13 Your Honor, the agreement read into the record by Mr.
14 Butler accurately reflects the agreement; and, upon approval of
15 such settlement by Your Honor, our committee would withdraw our
16 objection.

17 THE COURT: Okay.

18 MR. BRILLIANT: Your Honor, I'd also like to thank
19 Your Honor and your chambers for your accommodations over the
20 last week. It's obviously been a very hectic week for Your
21 Honor with just -- not just this case, but other things, and we
22 really appreciate your accommodating us --

23 THE COURT: Okay.

24 MR. BRILLIANT: -- in the telephonic hearing
25 yesterday.

1 THE COURT: That's fine.

2 Speaking of accommodating, are the people who got the
3 trial subpoenas, have they been released at this point?

4 MR. BRILLIANT: Yes, Your Honor. When we reached the
5 settlement agreement, we immediately released them.

6 THE COURT: Okay.

7 MR. BRILLIANT: Everybody was happy to go except for
8 one counsel, GE's counsel, who apparently wants to leave open
9 their right to seek, you know, sanctions for the filing of the
10 subpoena. I believe that your clerk has given them a -- you
11 know, a further date; and, if we have to, we'll come back and
12 respond to that.

13 THE COURT: All right. Well, I hope we don't have to
14 deal with that.

15 MR. BUTLER: Your Honor, the next item that I'd like
16 to deal with is the agreement that has been reached, in which a
17 number of parties played a role, but it includes -- it resolves
18 -- the objection that it resolves is the objection of the
19 creditors' committee that was filed, or the statement of the
20 creditors' committee, I should say, that was filed. And
21 there's a package of information here that I want to get out,
22 and I know Mr. Rosenberg will help me if I get it wrong, but I
23 think I have -- I think I have the understanding. And Mr.
24 Ziman's interests were implicated, and I think he will address
25 these, as well.

1 But the agreements reached -- have been reached as
2 follows. And these agreements, which will be reflected in the
3 order, will result in the withdrawal of the statement, or at
4 least the committee's agreement that the order ought to be
5 entered with these changes.

6 First, the DIP agent will agree that it does not have
7 the right to waive the intercompany liens that were the subject
8 of the cash management order and the subject -- Your Honor
9 talked about, the subject of this order. There was some --
10 there was a suggestion in the order that they had that right,
11 and that's being modified.

12 THE COURT: Okay.

13 MR. BUTLER: Second, that, to the extent that there's
14 going to be a change in borrowing base or in the financial
15 covenants, we will give -- the debtors will give reasonable
16 advance notice to the creditors' committee of those actions, of
17 those events. And seeing as we provide information to them on
18 a monthly basis, I don't see that as a burden, Your Honor.

19 The third --

20 THE COURT: Can I interrupt you there?

21 MR. BUTLER: Yes.

22 THE COURT: There was a suggestion -- and I don't know
23 if this actually is the case, but that the carve-out could be
24 affected by modification to the borrowing base, at least when I
25 read it. Is that possible?

1 MR. BUTLER: I don't believe it is. I'll ask counsel
2 for the DIP lenders whether they agree with that. I don't
3 think the carve-out can be changed in any respect on accounting
4 of the borrowing base.

5 MS. BEDELL: No, the borrowing base --

6 THE COURT: Please identify yourself.

7 MS. BEDELL: I'm sorry. Laureen Bedell for the DIP
8 lenders, Davis Polk.

9 The borrowing base certificate just gives you the
10 amount of -- accrued and paid. I think that's the only
11 relationship between the two, so --

12 THE COURT: Okay. Thank you.

13 MS. BEDELL: Just one moment.

14 The carve-out can impact the borrowing base, but not
15 vice-versa.

16 THE COURT: Okay. All right.

17 MR. BUTLER: Your Honor, the next item is, to the
18 extent that the debtors receive notice from the DIP lenders
19 that there is a triggering event in connection with a carve-
20 out, we have agreed to provide a copy of that written notice
21 immediately to the creditors' committee counsel.

22 THE COURT: Okay.

23 MR. BUTLER: Fourth, Your Honor, to the extent that
24 there's a triggering event of the carve-out, and that
25 triggering event is later resolved or waived, so that there's

1 not a continuing event of default, the agreement is that the
2 carve-out would be refreshed or would spring back to the
3 original amount that Your Honor is considering approval of
4 today.

5 THE COURT: Okay.

6 MR. BUTLER: Your Honor, I'll mention also on the
7 record that there was an inconsistency between the credit
8 agreement and the draft order with respect to the carve-out
9 language. The credit agreement was correct; the order was
10 incorrect. There are a few words that have to be modified in
11 connection with that, but it will be consistent with the
12 negotiated carve-out language that's in the credit agreement.

13 THE COURT: Okay.

14 MR. BUTLER: Your Honor, the next item goes to the
15 investigatory periods with respect to matters relating to the
16 prepetition lenders. Currently, all of the matters have --
17 under the order, propose to have a ninety-day window, which can
18 be extended, I believe it's for cause, upon motion to the
19 Court.

20 There are two -- some of those rights are going to be
21 carved out and put in separate buckets and extended for 180
22 days, subject to the same motion that can be filed to extend
23 for cause. And that would have to do with the committee's
24 review of any causes of action and/or leases the debtors have
25 given under these agreements and under the order; and, second,

1 the question as to the over-secured status of the prepetition
2 lenders.

3 MR. ROSENBERG: (Not identified) Correct.

4 THE COURT: And that will be 180 days.

5 MR. BUTLER: That will be 180 days.

6 THE COURT: Plus the opportunity to come to court.

7 MR. BUTLER: Correct, Your Honor.

8 THE COURT: Okay.

9 MR. BUTLER: Your Honor, there have been -- there are
10 a few places in the order where, in talking about adequate
11 protection of the prepetition interests, the phrase that we're
12 going to -- we're going to correct it to make sure it tracks
13 the statute and refers to value, to it -- to their interest in
14 the collateral.

15 THE COURT: Okay.

16 MR. BUTLER: Just to -- it's a --

17 (Counsel confer)

18 MR. BUTLER: Your Honor, also, in connection with the
19 review rights or investigatory rights being granted to the
20 committee, the parties would agree that the committee, if they
21 determined there was a basis to file an action, they would have
22 agreed or deemed standing to do so. The thought process behind
23 there is the debtors have already waived their interest in that
24 respect; and, therefore, it would be futile to make demand on
25 the debtors to prosecute before and then seek the Court's

1 approval. So they would have agreed standing to file the
2 complaint before this Court.

3 THE COURT: All right. People still have the right to
4 say, once it's filed, we don't need to pursue it on a fast
5 track or something like that.

6 UNIDENTIFIED ATTORNEY: I'm sorry, Your Honor?

7 THE COURT: I'm sorry. The parties in interest still
8 have the opportunity to go to -- try and persuade me that, once
9 it's filed, it doesn't have to be pursued on a fast track or --
10 you know, the scheduling issues are reserved, right?

11 UNIDENTIFIED ATTORNEY: Certainly, Your Honor.

12 THE COURT: Okay.

13 MR. BUTLER: Your Honor, the next -- I hope I get this
14 correct. The next issue is -- or the next agreement is a
15 bundling issue of rights that are either waived or not waived,
16 vis-a-vis what the committee wanted and the prepetition lenders
17 want as part of the adequate protection package, and they
18 implicate Sections 506(c), 507(b), and -- excuse me -- 506(c),
19 Section 551 of the code, and interest in the proceeds
20 (indiscernible) actions.

21 The agreement would be that the existing 506(c) waiver
22 proposed in the financing order will stand as drafted; however,
23 the creditors' committee objection with respect to Section 551
24 would be sustained, and they would -- on that particular point.
25 And there would be an agreement, in terms of any interest the

1 prepetition lenders would have in avoidance proceeds (sic)
2 under the terms -- or anyone else would have under 507(b), in
3 the interest of avoidance proceeds, that that -- that the first
4 thing that would be paid in priority would be the
5 administrative costs of the estate in generating that fund or
6 those proceeds.

7 So there would be, before any kind of intervening
8 interest could occur, the administrative costs would be paid
9 first.

10 THE COURT: So that's the super-duper -- okay.

11 MR. BUTLER: As someone described it to me, Your
12 Honor, this afternoon, Your Honor, as a 506(c) interest in
13 507(b).

14 THE COURT: Okay.

15 MR. BUTLER: I'm not quite sure that's the right
16 answer.

17 THE COURT: Well --

18 MR. BUTLER: I don't want to confuse the record, but
19 the idea is --

20 THE COURT: All right.

21 MR. BUTLER: -- that it's that basic concept.

22 THE COURT: Okay. On that general topic, I don't know
23 if this was omitted on purpose or inadvertently, but the
24 avoidance actions that are listed don't include 553, the
25 avoidance provision for set-off rights. Is that, you know,

1 improper set-offs? Was that intentional, or was that just a --

2 MR. BUTLER: I think that was a drafting glitch, Your
3 Honor.

4 THE COURT: Okay.

5 MR. BUTLER: We'll correct it.

6 THE COURT: So that should go in that list then.

7 MR. BUTLER: Your Honor, I believe that the statements
8 that I have made on the record reflect the understandings
9 between the debtors, the prepetition agent, the post-petition
10 agent, and the creditors' committee on these matters; and, if
11 accepted and approved in the final order to be submitted, would
12 result in the creditors' committee deeming their statement to
13 have been withdrawn or satisfied, or however one wants to
14 characterize it. And I'll ask Mr. Rosenberg to confirm that on
15 the record, after making one additional statement, and that is:

16 If Your Honor is in a position to grant the changes we
17 set on the record today, it is important to get a final order
18 in place. And we'd like, Your Honor, if you -- when we get to
19 the end of this hearing, if Your Honor is prepared to grant
20 this relief -- because we still have a ways to go -- we would
21 like Your Honor -- to be able to have Your Honor indicate that
22 the financing has been granted, so we can issue the appropriate
23 press releases this evening, if we get there.

24 But I think we would like to submit the order tomorrow
25 morning to chambers, so that -- there's a number of people, but

1 at least the committee wanted the opportunity to make sure that
2 we -- that they got all the wording correctly. We're not -- by
3 doing this, inviting, you know, fifty-five or seventy people to
4 a drafting session tonight, we've had a number of those,
5 because our intention is to simply conform -- conform the order
6 to the agreements placed on this record, not to redraft or
7 renegotiate it.

8 And, Your Honor, our request would be that, to the
9 extent there was any disagreement about that by any party, we
10 would come back for purposes of settling the order, not in
11 terms of revisiting the substance of the approval of the
12 transaction, if we get there.

13 THE COURT: Okay. Okay.

14 MR. BUTLER: Mr. Rosenberg?

15 THE COURT: Well, before he --

16 MR. BUTLER: I'm sorry.

17 THE COURT: Well, maybe you'll raise this. But the --
18 am I right then that the resolution that the borrowing base
19 point, which was just limited to reporting, does that mean that
20 other material modifications of the debt do come back for court
21 approval? That was the issue, I think, the committee raised.
22 And I understood the bank's point about the borrowing base, but
23 given a change, anything less material would come back here?

24 MR. BUTLER: Well, Your Honor, if we were making
25 material change in the negative covenants, the financial

1 covenants, or those issues that we didn't have the consent of
2 the committee, I think we would come back here. If there's
3 agreement between the two parties, you know, unless we thought
4 -- you know, you've asked us in the beginning of this case to
5 use some judgment about --

6 THE COURT: Right.

7 MR. BUTLER: -- what we think you'd want to hear
8 about. And if either of us thought that were the case, we of
9 course would bring it back to a monthly omnibus hearing.

10 THE COURT: Yeah, I understand there's the point about
11 successful syndication, and maybe things will change there, in
12 connection with the syndication, but --

13 MR. BUTLER: And that's -- but that's part of the
14 approved flex arrangement, Your Honor, in any event.

15 THE COURT: Right. Right.

16 MR. BUTLER: You know, we would not come back to Court
17 for that.

18 THE COURT: Right.

19 || (Counsel confer)

20 MR. BUTLER: May I have a moment, Your Honor?

THE COURT: Yes.

22 || (Counsel confer)

23 MR. BUTLER: Your Honor, one clarification. There was
24 -- one of the agreements that -- I mentioned the words
25 "negative covenants" on the record. I should strike that.

1 That was not the arrangement with the DIP lenders, and the
2 committee agrees with that. It was the financial covenants
3 that were implicated there, and I just want to make sure the
4 record is clear.

5 THE COURT: Okay. That's fine. All right. Well --

6 MR. BUTLER: And, Your Honor --

7 THE COURT: I think you may need to do something on
8 Page 3, Little Roman ii, just to -- I'm sorry. Page 13, Little
9 Roman ii, to deal with that issue. I think it's -- the way
10 it's worded now is a little different than what's been stated
11 on the record.

12 MR. BUTLER: Your Honor, I should also point out that
13 the agreement -- we'll make that change, Your Honor. The other
14 thing I want to point out on the record is -- Your Honor, is
15 that, in consideration for this package, the committee has
16 agreed that the priority for intercompany claims and liens that
17 is set forth in the cash management order that was submitted,
18 Your Honor and in the proposed DIP financing order are no
19 longer objectionable to the committee.

20 THE COURT: Okay. So that language is fine for both
21 orders then.

22 MR. BUTLER: Correct. The language that was
23 negotiated with the Pension Benefit Guarantee Corporation is
24 now acceptable to the committee.

25 THE COURT: Okay.

1 MR. BUTLER: Your Honor, I believe that --

2 THE COURT: Just a second. The -- I guess you
3 confirmed, or it was confirmed on the record that -- just about
4 the recital about being over-secured and the hundred-and-
5 eighty-day look-back period (sic). These -- the payments
6 themselves that are made are subject to re-characterization, to
7 the extent that 506(b) would require them to be made to
8 principal instead of interest?

9 MR. BUTLER: That is correct.

10 THE COURT: Okay. And I think that's particularly
11 relevant on Page 15, which is the mechanisms we worked out for
12 paying down a portion of the principal on the prepetition debt,
13 with asset sales. I think at the end of the first full
14 paragraph that's quoted on Page 50, and we should have a
15 proviso that:

16 Provided further that such prepayments shall be made
17 only to the extent that such loans are allowed secured claims
18 under Section 506(b) of the Bankruptcy Code.

19 MR. ZIMAN: Your Honor, may I be heard on this point?

20 THE COURT: Sure.

21 MR. ZIMAN: Ken Ziman, Simpson, Thacher & Bartlett, on
22 behalf of J.P. Morgan Chase Bank as prepetition agent.

23 The language Your Honor focused on is actually a
24 prepayment of the DIP financing.

25 THE COURT: Oh, that's the DIP?

1 MR. ZIMAN: Yeah.

2 THE COURT: All right.

3 MR. ZIMAN: The resolution of this issue that was an
4 issue that was raised with the debtors to provide greater
5 protection for the holders of prepetition secured claims was to
6 either require one of two things:

7 After a hundred-and-twenty-five-million-dollar basket
8 the debtors can use from asset sale proceeds, to take two-
9 thirds of the excess and to apply that, either to reduce the
10 DIP permanently, thereby reducing the priming, or to hold as
11 cash collateral for the benefit of not only the DIP lenders --

12 THE COURT: All right.

13 MR. ZIMAN: -- but the prepetition lenders.

14 THE COURT: So it's not -- so this language --

15 MR. ZIMAN: And also the set-off claims, yeah.

16 THE COURT: That's fine.

17 MR. ZIMAN: And I'd also point out for Your Honor, I
18 believe, on Page 31 of the version you're looking at in the
19 last sentence of "C," before the insert Mr. Butler read,
20 there's language there:

21 "Preserving the rights of parties in interest
22 regarding the characterization point" --

23 THE COURT: Right.

24 MR. ZIMAN: -- or the "de-characterization point."

25 THE COURT: Right. Okay. All right. The last point

1 on the -- on these -- on I think this basket of issues is,
2 again, on the debtors' reservation of rights in Paragraph 16.
3 If I read the pleadings right and if I heard you right today,
4 the debtors are reserving on the interest that we're talked
5 about -- we talked about, you know, to object if it's claimed
6 outside of the LIBOR scenario.

7 Why don't you also -- is there anyone that would like
8 to object to the fees and expenses asserted by someone other
9 than the agent?

10 UNIDENTIFIED ATTORNEY: Yes, Your Honor.

11 THE COURT: And I think, as I read this, this just
12 covered interest.

13 MR. ZIMAN: I thought earlier up it dealt with the --
14 what was allowed, but certainly, Your Honor, that is correct.

15 THE COURT: No, no, no. If you could take a look at
16 that because I think both on Page 38 and 39, at least, it seems
17 just to cover the interest rate.

18 MR. BUTLER: So we'll revise that, Your Honor.

19 THE COURT: Okay.

20 MR. BUTLER: Your Honor, then with those statements,
21 I'd like Mr. Rosenberg to confirm that we have satisfied the
22 requirements of the creditors' committee with respect to this
23 motion.

24 MR. ROSENBERG: Your Honor, I'm pleased to report that
25 we have. Our own objections have been satisfied and with, I

1 think, a reasonable compromise here. And I think, given where
2 we came out, including such issues in particular as the
3 preservation of the right to seek re-characterization, which
4 had not been in the earlier documents, the agreement with the
5 prepetition lenders, Mr. Brilliant's clients, that makes a lot
6 of sense. So we are generally happy and pleased with the
7 outcome this afternoon.

8 THE COURT: Okay.

9 MR. ZIMAN: Your Honor, Ken Ziman again for the
10 record.

11 The agent, too, is supportive of the resolution as
12 described by Mr. Butler, with just one clarification. The time
13 period for the committee to review the value is without
14 prejudice to the agent's rights or the rights of the lenders to
15 make a 506(a) motion, if and when they determine that to be
16 appropriate.

17 THE COURT: Right.

18 MR. ZIMAN: And the "super-duper claim" that was
19 described, regarding reimbursing essentially the estate for the
20 cost of obtaining avoidance proceeds before they would be
21 available to satisfy any diminution in value claim, that's to
22 the extent not already paid, since it's our property that's
23 going to pay a lot of the expenses of the estate already. It's
24 not a double-dip; it's the same concept.

25 THE COURT: Okay. Very well. Well, I agree that it's

1 a reasonable compromise and resolution of this basket of
2 issues, and so I would approve it.

3 MR. BUTLER: Your Honor, we --

4 THE COURT: Subject to the whole order, of course.

5 MR. BUTLER: Your Honor, moving along, I think the
6 next person that wants to be heard is Mr. Ziman wants to talk
7 about General Motors.

8 THE COURT: I'm sorry. There was one small thing,
9 because I looked at this a little differently in one respect.
10 And Mr. Ziman's comment about "double-dipping" made me remember
11 it.

12 Right now, on Page 41, the committee is limited to
13 \$250,000 to perform the investigation contemplated by its
14 charge to look at the bank's liens and claims. And that seemed
15 reasonable to me for avoidance actions and other causes of
16 action. But (indiscernible) charge.

17 I would assume that the work of the committee's
18 financial advisor in determining what the value of the debtor
19 is, and hence what the collateral is, probably wouldn't be
20 covered in that 250,000, would it? I mean, investment bankers
21 eat that up in about a month and a half.

22 MR. ZIMAN: Acknowledging that we may all be in a long
23 line of (indiscernible), I guess I would agree with that.

24 THE COURT: Okay.

25 MR. ZIMAN: And I don't think we have a problem. If

1 we go and commence litigation, clearly they need to be able to
2 respond, in terms of the 506(a) motion. And to do their
3 investigation, I think this is -- oh, I'm sorry. I'm --

4 THE COURT: Okay.

5 MR. ZIMAN: You know, from our perspective, you know,
6 I think the debtors have a vested interest in this, as well,
7 because this is a case where there, we all hope, is substantial
8 unencumbered property.

9 THE COURT: This is probably all academic in my mind -

10 -

11 MR. ZIMAN: Yeah.

12 THE COURT: -- but just thinking ahead to the
13 possibility.

14 MR. ZIMAN: Hope so. Hope so, Judge. So I think I
15 agree with Your Honor that, to the extent that the committee is
16 put to the test to either determine the value for their own
17 benefit to be able to waive on this, or being put to the test
18 because we filed a 506(a) motion, I don't see the two fifty as
19 barring that.

20 THE COURT: Okay. All right. All right. Sorry to
21 interrupt you, Mr. Butler.

22 MR. BUTLER: Your Honor, I believe the next person
23 that wants to talk about it, I believe Mr. Bienenstock is
24 rising to indicate that his objection is also resolved, the
25 General Motors Corporation.

1 || (Laughter)

2 MR. BIENENSTOCK: Your Honor, I'm sorry. I didn't
3 know this machine made that sound.

4 || (Laughter)

5 MR. BIENENSTOCK: Good afternoon. Martin Bienenstock
6 of Weil, Gotshal & Manges for General Motors Corporation.

7 Your Honor, coming in to this hearing, General Motors
8 Corporation had agreed on a proposed order with the debtor as -
9 - in its capacity as a customer, and we were hoping that that
10 would be approved as it is. Of course, there were subsequent
11 arrangements that Mr. Butler has described to the Court, which
12 are going to require some additional language.

13 There is one particular comment about conforming
14 language on adequately protecting interest and collateral,
15 which we felt, if made, might, in certain sections of the order
16 and not in others, might have a negative implication. So after
17 discussing it with the debtor, we determined the best thing was
18 to simply clarify this on the record. It arises under Section
19 -- Paragraph 18 of the proposed order, which is applicable to
20 all customers.

21 In general, Your Honor, what Paragraph 18 does is it
22 provides customers, first, a replacement lien for their
23 allowable set-offs on their post-petition payables because
24 they'll be paying their prepetition payables into the estate.
25 But the post-petition lien may or may not have any value

1 because it's second to the DIP lenders' first lien. So if it
2 is insufficient to fully protect the customer's allowable set-
3 off claims, Paragraph 18 provides for the customers to have
4 other liens: Some are third liens on property of the state
5 behind the prepetition lenders; some are second, equal liens
6 with the prepetition lenders on property that had not
7 previously been part of a collateral package.

8 There's a provision in Paragraph 18 that provides for
9 what I've just described and 507(b) claims in a certain
10 priority to back up the liens. The clarification I wanted to
11 make -- and I think General Motors would want, and I suspect
12 all of the customers would want the debtors or any party in
13 interest to speak up if they don't think -- if this is the
14 meaning of the order is this:

15 If, hypothetically, a customer has an allowable set-
16 off claim of a million dollars as of the petition date. And it
17 turns out that the replacement liens are worth \$800,000. The
18 other liens, the second and third liens are the 507(b) are
19 supposed to protect the two-hundred-thousand-dollar diminution;
20 that's the diminution of the allowable set-off claim as of the
21 beginning.

22 We think it's plain that's what we intended, we think
23 that's what the debtor intended and the prepetition banks
24 understood and the committee understood. But lest there be any
25 confusion on that, we thought it's important to put it on the

1 record.

2 THE COURT: Okay. Well, I certainly read all of the
3 grants of adequate protection here, not just for set-off
4 claims, but for the other secured creditors, petitioned secured
5 creditors, to cover diminution only.

6 MR. BIENENSTOCK: Right.

7 THE COURT: To cover diminution.

8 MR. BIENENSTOCK: But our point is it's diminution
9 from the value of our allowable set-off claim as of

10 THE COURT: Diminution of the set-off claim.

11 MR. BIENENSTOCK: That's right.

12 THE COURT: Yes.

13 MR. BIENENSTOCK: Okay. Thank you, Your Honor.

14 (Counsel confer)

15 THE COURT: And just to make sure I understand this
16 interplay, this sort of still provides the mechanism for --
17 without trying to add more core set-offs, more (indiscernible)
18 to let that hearing, right?

19 MR. BIENENSTOCK: Yes. So that will, in effect,
20 reduce at least some customers' allowable set-off claims that
21 would need protection.

22 THE COURT: All right. So it's important, obviously,
23 to keep a record of what their claims were at each point, so
24 they can -- so this can be tracked.

25 MR. BIENENSTOCK: I have no doubt that -- well, at

least with General Motors, we will do it, and I'm quite sure
Delphi will have a counter-record.

3 THE COURT: Okay.

4 MR. BIENENSTOCK: Which hopefully will match up.

THE COURT: Okay.

6 MR. BIENENSTOCK: Thank you, Your Honor.

7 MR. BUTLER: And I'm not sure I followed exactly how
8 much Mr. Bienenstock got at the conclusion. I will confirm to
9 the Court on the record that the conclusion he reached is one
10 that the debtors concur with.

11 THE COURT: Okay.

12 MR. BUTLER: As the Court also stated.

13 Your Honor, moving now to some other issues, if we
14 may, I think we have resolved -- I don't know -- is Mr.
15 Somerstein still in the courtroom?

16 || (Counsel confer)

17 MR. BUTLER: I believe he now resolved any issues that
18 the DIP lenders have, the prepetition agent has, the Goodwin
19 Procter Group has as part of the prepetition bank group, the
20 creditors' committee has, and General Motors has as to the
21 order that was filed as the Debtors' 4, with the changes that
22 we have thus far placed on the record.

That leaves us with a -- turning to Debtors' --
turning to Debtors' 28 and 29, in terms of the objections that
are left, that leaves us with objections from various set-off

1 and lien claimants, the vast majority of which have been
2 resolved based on the treatment that we propose here, and
3 others who still want to address the Court. And I'm going to
4 ask us to get to those in a few moments, but I want to address
5 any other objections first.

6 And I think the only other objection that has not been
7 fully resolved, other than getting off into the set-off bucket,
8 if you will, or basket, is that of Bank of America, as it
9 relates to their interest as an aircraft lessor. And in that
10 respect, they had filed an objection that wanted to make it
11 clear that the interest being -- the interests that were being
12 given here today did not negatively implicate the aircraft
13 leases and certain personality and other matters relating to
14 that.

15 And, in fact, there is language in Paragraph 25 of the
16 order, Page 54 of Debtors' 4, that is quite explicit in that
17 regard, and I think frankly stated -- Your Honor stated it at
18 the first day hearing, in terms of Your Honor's expectation
19 with aircraft leases and property that wasn't necessarily
20 property of the estate. But even beyond that, it is now
21 explicit as to personal property that's subject to aircraft
22 leases and so forth.

23 I believe that that language as it stands is
24 acceptable to Bank of America. But I believe Mr. Mears is on
25 the phone, and there were other things that they wanted the

1 debtors to do beyond this language that I believe Mr. Mears
2 still wanted to address the Court. We simply couldn't
3 accommodate the needs.

4 THE COURT: Okay.

5 MR. MEARS: (Via telephone) Your Honor, thank you very
6 much, this is Pat Mears.

7 We have had long conversations with the debtors
8 counsel. We've really narrowed the issues down to three:

9 Number one, there are -- there is some ancillary
10 property that includes cash collateral generated by the
11 aircraft that we are asking that it not be subject to a lien,
12 and I think that's the understanding. We have asked that --

13 THE COURT: How does the aircraft generate cash
14 collateral --

15 MR. MEARS: Your Honor, there are --

16 THE COURT: -- is it leased out?

17 MR. MEARS: There are charter agreements --

18 THE COURT: Okay.

19 MR. MEARS: -- and there are revenues payable under
20 the charter agreements. There potentially are subleases,
21 although I'm not sure that there are any in existence right
22 now, but the charter agreements are pledged to us as all of the
23 revenues therefrom.

24 THE COURT: Okay.

25 MR. MEARS: So what we'd ask is that -- and we

1 understand that the debtors are using whatever cash collateral
2 that is, generated by the -- that's generated by the charter
3 agreements. We just want to make clear, we've asked for the
4 insertion of a phrase in Paragraph 25 that I've sent on to Mr.
5 Butler and also to Davis Polk, just to make sure that the liens
6 do not cover property that is subject to the lease agreements
7 or as security for. I haven't heard them on that, but I --
8 based on what Mr. Butler says, I think that tells us that he's
9 willing to do that.

10 The second item is we are objecting to the
11 subordination of our 365(b) (10) claim.

12 THE COURT: Can we take them one -- well, let's take
13 them one at a time, Mr. Mears.

14 MR. MEARS: Okay.

15 MR. BUTLER: I think the issue -- and I know counsel
16 for the DIP lenders has risen as well. I think the issues that
17 the debtors have and we believe that this already is covered by
18 the order, is that as it relates to this particular issue --
19 and I think I have it right -- that if, in fact, there's a
20 valid lien in that particular property, then it is not
21 negatively impacted by this order.

22 THE COURT: Right. That's covered by the general
23 language granting the DIP lender a lien.

24 MR. BUTLER: And therefore, we thought nothing else
25 was needed, and one of the things --

1 THE COURT: What kind of existing liens are not primed
2 if they were -- as laid out in the graph? I forget what it is?

3 || (Counsel confer)

4 MR. BUTLER: There are about seventeen, I believe,
5 Your Honor.

6 UNIDENTIFIED ATTORNEY: Seventeen.

7 MS. BEDELL: Sixteen.

8 MR. BUTLER: 7(c), right? Seven Charlie?

9 MR. MEARS: Your Honor, on that point -- and, you
10 know, if it's necessary to file a motion for adequate
11 protection, we will, but we would just ask that continuing
12 liens granted on what I'm calling "ancillary property" --

13 THE COURT: No, the debtors can't use -- can't use
14 collateral without your consent, so -- or showing of adequate
15 protection. So you're stating to them now you don't consent.

16 MR. MEARS: That's correct.

17 THE COURT: So the ball is in your court now, at this
18 point.

19 MR. MEARS: Okay. That's fair enough, Your Honor.
20 Thank you.

21 THE COURT: Okay.

22 MR. MEARS: Then the only other point is that we are
23 getting to the subordination of our 365(d)(10) claims, any
24 other claims that might be granted pursuant to this order. The
25 debtor is getting use of the planes during the Chapter 11 case.

1 There is an elevated test given to 3659(d)(10) claims, and we
2 wish to have that (indiscernible) --

3 THE COURT: Well, are these secured -- I thought these
4 were secured -- or are these true leases?

5 MR. MEARS: These are true leases. But as security
6 for the lease obligations, there is a small -- a small part of
7 what I call "collateral," the charter remnants, the
8 (indiscernible) agreements, subleases that are separately
9 pledged to secure the lease, the true lease obligations.

10 MR. BUTLER: Your Honor, the debtors' problem with the
11 language Mr. Mears client wanted him to pursue here is that it
12 really attempted to have the debtors agree with lots of things:
13 That these are true leases; that this part is secure; that this
14 -- and the relationships between them, and we weren't prepared,
15 simply, to do that. We understand Your Honor's admonition
16 about cash collateral, but I don't believe that this order is
17 drafted -- if Mr. Mears's client has that which he claims that
18 they have -- that they are negatively impacted.

19 MR. MEARS: No, I -- just to respond, Your Honor, I am
20 not asking for -- I understand Mr. Butler's point. I guess all
21 I'm asking is that, to the extent that we do have true
22 365(d)(10) claims, then those not be subordinated into any
23 other claims that are -- that would arise from this order.

24 (Counsel confer)

25 THE COURT: You know, Mr. Mears, was that a part of

1 your objection? I have to confess, this is -- I have to rely
2 on -- because I didn't look at this issue until about ten
3 seconds ago.

4 MR. BUTLER: Well, I've never heard that raised by Mr.
5 Mears in your objection. Was it raised?

6 MR. MEARS: I think it was raised in discussions.

7 MR. BUTLER: Well --

8 MR. MEARS: If we had any objection, certainly in
9 discussions with Mr. (indiscernible) on this.

10 MR. BUTLER: Because I think what you're asking for is
11 not acceptable, probably, to anybody in the courtroom, in terms
12 of the lenders or anybody else. And, Your Honor, he didn't
13 raise it in any objection before the Court.

14 THE COURT: Well, I don't -- I guess I still don't
15 understand the objection. This isn't as to the specific
16 assignment that you've been given of a lease, because that
17 would be the debtors' -- that wouldn't be covered by 365(10) --

18 MR. MEARS: (Indiscernible.)

19 THE COURT: You're talking about in the event that
20 these leases are --

21 MR. MEARS: No, we are -- Your Honor, we believe these
22 are true leases, and the lease obligations are monthly lease
23 payments that are due the Bank of America by the debtor. And
24 under 365(d)(10), a performance of lease obligations, at least
25 as to the sixty-day grace period, are given such a priority.

1 The DIP order does provide for subordination of
2 administrative expenses. We are asking that our 365(d)(10)
3 claims, and to the extent that they are made -- this is based
4 on a true lease, would not be subordinated.

5 MR. BUTLER: Your Honor, I don't know if this is a
6 subordination. Mr. Mears is saying as though we're giving a
7 super-priority claim to the DIP lenders, and the answer is:
8 You bet. And it is a super-priority, it's intended to be;
9 they're not going to give it up for this or any other kind of
10 administrative claim outside of what's said in the order. And
11 this, you know, objection is untimely, among other things, Your
12 Honor.

13 THE COURT: Yeah. I'm going to deny this objection
14 for that reason, unless you're prepared to have a whole trial
15 today on the 364(c), which I think highlights the untimeliness
16 of the objection. This isn't an issue of adequate protection;
17 this is just whether the debtors could get financing on a
18 simple non-priming, non-super-priority basis.

19 MR. MEARS: Other than that, all of our other
20 objections are withdrawn.

21 THE COURT: Okay. All right.

22 MR. BUTLER: Well, I think -- and just so I ask in the
23 courtroom on the phone, to see if I have missed anyone. Other
24 than set-off claimants, is there any other party who has an
25 objection to this matter?

1 THE COURT: I'm only going to say this once more.
2 Please turn off your Blackberries, it affects the transcript.
3 This is on a digital recording system. Everything else about
4 the system is superior to the prior system. So that, if you
5 have your Blackberry on and you get an e-mail, there's static
6 on the CD; and, therefore, the people who transcribe it won't
7 be able to hear it. So please turn off your Blackberry's.

8 MR. ROSENBERG: Your Honor, I wonder if it's somebody
9 on the telephone because it also affects it on that end. You
10 might --

11 THE COURT: All right. Well, I'm guessing it does.
12 It's all the way back, but maybe that is the case. If you're
13 on the telephone, you must turn it off, too.

14 || (Laughter)

15 THE COURT: Well, you'll have to do your conference
16 calls in --

17 MR. BUTLER: Your Honor, one other party wants to be
18 heard before we get to set-off.

19 MR. NEWMAN: Your Honor, very, very briefly, Max
20 Newman of Schafer & Weiner, on behalf of nine parties. We
21 filed a joint objection relating, on part, to tooling liens
22 (sic), and we had a discussion during the break with respect to
23 resolving that with some additional language in Section -- in
24 Paragraph 6 of the financing order, relating to the
25 administrative expense claim of the DIP lenders.

1 They had put a carve-out in Section 7(d) of the order,
2 with respect to liens of the type -- it's on the top of Page 22
3 of the red-line.

4 THE COURT: Right.

5 MR. NEWMAN: And that carve-out was not in place, also
6 with respect to the super-priority administrative claim. And
7 it was my understanding that there was an agreement to import
8 that same carve-out, that same exception into the super-
9 priority lien status.

10 THE COURT: I'm sorry. Super-priority lien or super-
11 priority claim?

12 MR. NEWMAN: Super-priority claim. I'm sorry, Your
13 Honor, that's my mistake.

14 THE COURT: Is there such an agreement?

15 MR. BUTLER: Your Honor, there is.

16 THE COURT: Okay.

17 MR. BUTLER: And there's language that's going to go
18 into 6(a), Paragraph 6(a), that is going to make sure it -- the
19 issue is raised here. The language -- and the DIP lenders
20 agreed to this, I'm told. The language that appears on Page
21 22, at the top of Page 22, in Romanette iv, involving:

22 "Statutory liens or secured interests arising after
23 the petition date and permitting of the DIP credit agreement,
24 that by operation of law would have priority over previously
25 perfected security interests."

1 That language is going to also appear in Paragraph
2 6(a) in the fifth line.

3 THE COURT: Okay.

4 MR. NEWMAN: Thank you, Your Honor. With that, my
5 clients support the entry of the order as drafted.

6 THE COURT: Okay.

7 MR. BUTLER: Now I ask if anyone other than set-off
8 claimants, if there's any other objector on the phone or in the
9 courtroom who has an issue with the order.

10 Your Honor, I think that, with the Court's permission,
11 we'll now then turn to set-off, the last remaining bucket,
12 which is the set-off claimants.

13 Your Honor, there are a series of matters I want to
14 read into the record, much like Mr. Bienenstock's
15 clarification. I would point out to Your Honor that we're now
16 focused primarily on Paragraph 18 of the order, which I concede
17 to Your Honor is the longest paragraph I have ever seen in a
18 financing order, but it is the product of extraordinarily
19 lengthy negotiations between all of the major stakeholders in
20 this case, I think, that had a direct interest in this, other
21 than -- I should be candid about this -- other than the
22 creditors' committee, which did not participate directly in the
23 immediate negotiations relating to this, but now support entry
24 of the order.

25 And with respect to that language -- and I don't think

1 we propose to make any changes to that language because it is
2 so delicately negotiated, but I do want to read some
3 clarifications, which I understand resolve the objections of
4 maybe twenty or twenty-five of the parties on board.

5 The first, Your Honor, is just a statement that,
6 notwithstanding the fact that there is a series of alternative
7 dispute approaches in this order that basically say --
8 basically say, first, go work out your set-offs with the
9 company and the committee; second, go to mediation; third, go
10 to arbitration, you know, or you can also come to court. It's
11 not intended -- we'll certainly clarify if there's any language
12 clarification we need to, but I'll say it on this record. It's
13 not intended to prevent anyone from coming to court at any
14 time.

15 Now it also means that there may be -- some of us will
16 come before Your Honor and say that Your Honor ought not grant
17 the relief they're seeking, without having gone through all of
18 that, so we reserve all of our rights; the committee reserves
19 its rights, but -- and other parties do. But the fact is, if
20 an individual, you know, set-off claimant wants to come to
21 court, then they can come to court.

22 THE COURT: Subject to the other parties' rights to
23 argue that they should go through these other alternative
24 dispute mechanisms.

25 MR. BUTLER: Right, right. But the order doesn't

1 require them to do it, Your Honor.

2 THE COURT: Okay.

3 MR. BUTLER: And that's -- I want to make that clear.

4 THE COURT: I'd like the parties to look at it really
5 carefully because I've got a -- I mean, I don't have any
6 problem with it, requiring it. But if that's the deal, I think
7 -- especially given the fact that, clearly, not every set-off
8 claimant is here, just the objectors are here. You ought to
9 make it clear that, A, they have the right to come to court,
10 notwithstanding the other procedures; and, B, everyone else has
11 the right to request that alternative dispute resolution
12 procedures be field first.

13 MR. APPLEBAUM: (Via telephone) Your Honor, just as to
14 -- Joel Applebaum (indiscernible). Does that include binding
15 arbitration? We believe that that should be included in that
16 directive?

17 THE COURT: Now, what I'm saying -- well, I'm not sure
18 I understand you. What I'm saying is just -- repeating what
19 Mr. Butler was saying, which is that, although these
20 alternative dispute resolution mechanisms are in the agreement,
21 set-off claimants are not bound to follow that sequence; and
22 can, instead, at any time come to court --

23 MR. BUTLER: Right.

24 THE COURT: -- before they go forward with any of that
25 sequence, subject, of course, to other parties' rights,

1 including Delphi's rights, to argue to the Court that the Court
2 should abstain and require the alternative -- ADR.

3 MR. BUTLER: And, Your Honor, I should point out that
4 Paragraph 18(a) on Page 40 of Debtors' 4 does have language in
5 it to that effect.

6 THE COURT: Okay. That's fine.

7 MR. BUTLER: The bottom line. I mean, we put it in,
8 but I will make sure it's very clear --

9 THE COURT: All right.

10 MR. BUTLER: -- but I wanted to state it on the
11 record.

12 THE COURT: All right. I just wanted to make sure it
13 was clear because I wasn't sure.

14 MR. BUTLER: Your Honor, the next item -- and this,
15 again, we're on Paragraph 18 on all of these. With respect to
16 Paragraph 18(a)(4), we want to clarify that nothing in the
17 order affects the right of any party to exercise post-petition
18 set-offs or recoupment rights with respect to these post-
19 petition matters.

20 Second, with respect to Section eight -- Paragraph
21 18(a)(1), to the extent that any party has a valid prepetition
22 set-off right, nothing in the order affects such party's
23 rights. However, with respect to valid prepetition recoupment,
24 nothing in the order diminishes such recoupment right, but
25 channels such rights into the program defined in Paragraph 18.

1 Third, with -- and this is with respect to Paragraph
2 18(a)(3). There is no cap in the ordinary course set-off or
3 recoupment rights of any party other than General Motors
4 Corporation, which is as defined in the order.

5 Fourth, with respect to Paragraph 18(a)(1), similar to
6 the point -- one of the earlier points I just made. The
7 prepetition set-off or recoupment rights of any party, which is
8 a valid set-off or recoupment right, will be permitted under
9 Section -- Paragraph 18, irrespective of the financial
10 condition of the debtors.

11 And, finally, with respect to Paragraph 7(c), the
12 prepetition and post-petition set-off and recoupment rights of
13 any party are senior to the rights of the DIP lenders.

14 THE COURT: Well, okay. And are the DIP lenders in
15 agreement with that statement?

16 || (Counsel confer)

17 UNIDENTIFIED ATTORNEY: May I have a moment, Your
18 Honor, please?

19 THE COURT: Yes.

20 || (Counsel confer)

21 MR. BUTLER: Your Honor, like I used the word
22 "negative covenant" earlier, when I shouldn't have, I used a
23 couple of extra words I shouldn't have either, I'm told by
24 everybody.

25 And Paragraph 7(c), and I'll read it again, the words

1 again:

2 "The prepetition set-off and recoupment rights of any
3 party are senior to the rights of the DIP lenders."

4 That's what Paragraph 7(c) says.

5 THE COURT: Okay.

6 MR. BUTLER: And the DIP agent agrees with that
7 statement, correct?

8 THE COURT: All right.

9 MR. BUTLER: Correct? You --

10 UNIDENTIFIED ATTORNEY: Yes.

11 MS. BEDELL: I'm sorry, Your Honor. Laureen Bedell
12 again, on behalf of the DIP agent. We'd like to consult with
13 this, we're just not sure we agree and (indiscernible) --

14 (Counsel confer)

15 THE COURT: You're talking about prepetition rights,
16 right?

17 MR. BUTLER: Yes, Your Honor.

18 (Counsel confer)

19 THE COURT: They're not being primed.

20 (Counsel confer)

21 THE COURT: For example, this doesn't reorder the
22 adequate protection loan (sic).

23 MS. BEDELL: Right.

24 THE COURT: This just states that they're not being
25 primed by the DIP loan.

1 MR. BUTLER: Right.

2 THE COURT: All right. Well, I think all of those
3 things implicit in the order, and -- all right. So to the
4 extent that they help clarify the order, that's fine. I think
5 the record will reflect that.

6 MR. BUTLER: Your Honor, I believe there are some
7 parties -- some prepetition -- some set-off claimants or
8 alleged plaintiffs that still want to address the Court.

9 THE COURT: Okay.

10 MR. BUTLER: And, Your Honor, it would be helpful, if
11 they do so, if people would identify what their objection is,
12 so we can track to it, please.

13 THE COURT: Okay.

14 MR. MC DOWELL: (Via telephone) Your Honor, my name is
15 Ralph McDowell, I represent Lear Corporation. I'm sorry
16 (indiscernible).

17 THE COURT: You have to speak up a little louder, sir.

18 MR. MC DOWELL: Okay. If I understood the
19 clarification, which I appreciated, especially with respect to
20 the priming and the arbitration, the goal of this paragraph is
21 (indiscernible) not intended to alter the substantive factual
22 language (indiscernible) with respect to the set-off
23 (indiscernible), regardless of whether those are prepetition or
24 post-petition. And I listened to Mr. Butler, he went through
25 them, and I believe that this (indiscernible).

1 But that would be -- that is the only remaining
2 objection that we have, is that the financing order does not
3 take substantive contractual life and alter them
4 (indiscernible).

5 THE COURT: Only to the extent that, ultimately, you
6 still have to prove your claim under the Bankruptcy Code and
7 your right to set-off under the Bankruptcy Code.

8 MR. MC DOWELL: Understood, and -- understood
9 (indiscernible), Your Honor.

10 THE COURT: Okay.

11 MR. BUTLER: Your Honor, the only point I'd say is, I
12 mean, Paragraph 18, which has been so careful negotiated, it
13 says what it says. You know, and I don't want to sort of have
14 these blatant, you know, sort of -- I understand what the Court
15 said, and I understand what the -- you know, and I believe that
16 to be the case, that they have to prove their matters, and
17 there's a process here on how they can deal with these matters
18 under the DIP financing order.

19 THE COURT: Right.

20 MR. MC DOWELL: But, Your Honor, Paragraph 18 says
21 what it says, and the language and the first provision of it
22 could be argued also (indiscernible) contractual right. That's
23 the reason for my objection and the reason for the
24 clarification.

25 THE COURT: Well, the reason, I think, that I'm having

1 problems with your statement is that, for example, Section 362
2 alters, you know, substantive contractual rights. So if you're
3 accepting the existence of the Bankruptcy Code, then I agree
4 with you.

5 MR. MC DOWELL: Right. So with the extension of 362,
6 I agree, absolutely.

7 THE COURT: You know, the Bankruptcy Code, generally,
8 right. It's not just 362.

9 MR. MC DOWELL: Right.

10 THE COURT: Okay. All right.

11 MR. MC DOWELL: (Indiscernible) file a motion
12 (indiscernible).

13 THE COURT: Okay. All right.

14 MR. MC DOWELL: Thank you.

15 THE COURT: Sure.

16 MR. FUSCO: (Via telephone) Your Honor, this is
17 Timothy Fusco from Miller, Canfield, Paddock & Stone, on behalf
18 of Ford Motor Company.

19 THE COURT: Yes.

20 MR. FUSCO: Your Honor, our issue is with the
21 inclusion of recoupment in the definition of a set-off. We
22 have no problem with true set-offs. Obviously, the exercise of
23 set-offs are stayed under 362, but recoupment rights are not.
24 And essentially ordinary course recoupment, which are nothing
25 but a (indiscernible) between the customer and the supplier,

1 are not affected by the automatic stay. And it is proper in an
2 order like this to restrict recoupment rights, even in the
3 context of DIP financing.

4 We object to going through all of the procedures that
5 are set forth in here to exercise a right that is simply not
6 affected by the automatic stay, and any -- as, again, it's all
7 ordinary business process. We're talking about the way we do
8 business, and we think it's absolutely fair that we should be
9 allowed to continue our recoupment, as opposed to our set-off
10 rights.

11 THE COURT: Well, I guess I have two things to say in
12 respect to that:

13 First, as I read this, and as clarified further by Mr.
14 Butler on the record, nothing in this Paragraph 18 is intended
15 to change the substantive rights that -- as far as doing
16 business, that Delphi have in respect of true recoupment claims
17 or recoupment rights.

18 That being said, there's also recognition, not only as
19 to recoupment rights, but also as to set-off rights, that
20 ordinary course rights of that nature will not subject to the
21 automatic stay. But they are subject to a procedure which
22 seems reasonable to me, particularly in light of the right of
23 any such party to try to expedite that procedure by coming
24 straight to court to determine whether, in fact, what someone
25 claims is a recoupment right or a set-off claim is, in fact, a

1 recoupment right or a set-off claim.

2 And the cases are, unfortunately, pretty many, and
3 they go up to the circuit level, as to what a recoupment claim
4 is, a recoupment right is. And, frequently, what a party says
5 is a recoupment right, the Court finds is not; and, of course,
6 any bankruptcy lawyer worth his or her salt is going to tell
7 the client if there's any doubt, let's not exercise self-help.

8 So I would -- I view this procedure as one that is
9 beneficial to both sides on this transaction, and that it lays
10 out a rational way for the debtors, with input from the
11 creditors' committee, to make those decisions in the first
12 instance on something that's really clear very quickly, and on
13 something that's not very clear whether it's a recoupment right
14 or not or a set-off right or not, to do it in an organized way.
15 If it turns out that they're jerking people around, then those
16 people have a chance to come to the -- to have it stopped.

17 But I don't view this order as somehow taking away
18 people's rights to recoup. But of course, "rights to recoup"
19 begs the question as to whether you really do have the right,
20 and I think that's all this does, is lay out a procedural
21 mechanism for making that clear.

22 MR. FUSCO: All right. Thank you, Your Honor.

23 THE COURT: Okay.

24 MR. REISMAN: Your Honor, Steven Reisman with the firm
25 of Curtis Mallet-Prevost, on behalf of Flextronics, which is

1 the largest trade creditor in this case.

2 I really have three points to make -- really four
3 points to make: One, I compliment the debtor on their efforts
4 with respect to the set-off provisions and the mediation
5 arbitration protocol that they're trying to put in place.

6 The first point I'd like to make Your Honor is with
7 respect -- this is a substantive point -- a substantive point
8 with respect to 18(a)(2), the last sentence. It's a little
9 unclear to me -- and I'm looking from a black-line, Your Honor,
10 so I apologize, but 18(a)(2), last sentence, Page 45 of the
11 black-line. It says:

12 "Notwithstanding any award in any such arbitration, in
13 no event shall the set-off claimant be permitted to exercise
14 its set-off right against any payables other than prepetition
15 payables, except as herein after set forth."

16 I'd just ask for a modification of that to say, except
17 as set forth in this Paragraph 18, because it talks about
18 before then and after that sentence about the ability to set
19 off against post-petition payables, as well.

20 THE COURT: Okay.

21 MR. REISMAN: This --

22 THE COURT: That sounds like it makes sense to me.

23 MR. BUTLER: Yeah. I mean, Your Honor -- something,
24 Your Honor, I tried to avoid with all these parties is -- you
25 know, there are literally fifty people that want to word-smith

1 this.

2 THE COURT: Right.

3 MR. BUTLER: I mean, it is -- Paragraph 18 deals with
4 set-off, this is all --

5 THE COURT: But if there's any remedy as to post-
6 petition payables that actually precede this paragraph, then I
7 think Mr. Reisman is right, so maybe you should -- just check
8 to see whether there are. He'll show you if there are. If
9 there are, then I think his fix is fine.

10 MR. REISMAN: Your Honor, the second point I have to
11 make -- and it's really the second and third -- I think it's
12 appropriate for the debtor to put in place some type of
13 protocol on this mediation set-off. For example, they say that
14 notice is to be given to the committee, the debtor, the agent,
15 but no one really knows who to send the notice to, and, you
16 know, we don't want to -- we want to get the right people, to
17 try and work through the issues. As a first line, we'll work
18 through the businesspeople in trying to work through this, but
19 if we can't, I think people should have the right to know, you
20 know, who gets that notice.

21 And it should also set forth, with respect to the
22 mediation and the arbitration, who's going to bear the cost and
23 the process for dealing with that. And I leave it to the
24 debtors to propose something in that regard for the various
25 parties that have the set-off rights.

1 THE COURT: All right. Well, as least as to the first
2 point, I'm sure the debtors will work out, probably
3 (indiscernible) a process to accomplish this, and it's probably
4 going to be at -- you know, at a couple of different levels.
5 The easy ones are probably dealt with at a -- you know, one
6 level, and the harder ones go to a different level when you get
7 into actually contesting these things, so -- but I leave that
8 to them. They've been pretty busy, so that's the next thing to
9 turn to.

10 MR. REISMAN: Okay. Thank you.

11 MR. TOERING: Gordon Toering, Your Honor, on behalf of
12 Robert Bosch Corporation. I just want to confirm -- there has
13 been a lot of discussion about the particular Paragraph 18. I
14 just want to make sure that all of us are clear, and I
15 understood what the Court said, and just wanted to verify that
16 I understood correctly.

17 My understanding of this is that this procedure in
18 Paragraph 18 is a -- it is a procedure; and that, at any point,
19 a set-off claimant could come into this court, file a motion
20 for leave from the stay, and at that point the debtor and any
21 other party in interest could say, not that your ordered under
22 this order to go through this arbitration/mediation procedure,
23 but rather that it would be expedient that the Court should
24 abstain on the basis of any number of factors. Is that
25 correct? Is that --

1 THE COURT: Yeah.

2 MR. TOERING: Okay.

3 THE COURT: Yeah. Well, obviously, I'm giving people
4 warning. If you get into a procedure and you're coming here
5 because you just don't like how it's done, you're going to know
6 pretty quickly that I'm going to send you back to the
7 procedure, unless I think it's fundamentally unfair, so -- I'm
8 not giving people an option to pursue mediation and
9 arbitration, and then change their mind in the middle of it. I
10 mean, I guess you could do it, but it wouldn't be a very
11 pleasant hearing.

12 MR. TOERING: Sure.

13 || (Laughter)

14 MR. TOERING: That wouldn't be our intent, Your Honor.
15 The other part --

16 THE COURT: I'm sure it wouldn't.

17 MR. TOERING: The other part is just to verify on the
18 post-petition. My understanding is that our post-petition set-
19 off rights -- and this does affect going-forward shipments
20 because Bosch is both a supplier and a customer of Delphi.

21 THE COURT: Right.

22 MR. TOERING: My understanding is that, as to post-
23 petition set-off rights, that those would prime the DIP lenders
24 and anybody else; and that was, I thought, an understanding
25 that had been reached. Because that does affect whether or not

1 we're willing to extend credit to the debtor and so forth. So
2 I'd like some clarification on that.

3 MR. BUTLER: Your Honor, I don't want to get into the
4 exercise of what's prime or what's not prime. They're
5 permitted, post-petition set-off rights can be exercised. I'll
6 leave it at that.

7 MR. TOERING: Well, Your Honor, just to follow that
8 up, I guess that leaves it someone open there. My
9 understanding -- I just don't want a situation where a lender
10 is coming in and saying, worst-case scenario, the case starts
11 crumbling, and the lender comes in and says your set-off rights
12 are subordinate to our rights. And that's what I'm trying to -
13 - trying to get at, at this point.

14 And we can work this out, I guess that's just
15 something we can manage, in terms of the credit issue. But it
16 is something that if we clarify it today, I think it would be
17 helpful.

18 MR. BUTLER: I think it's clarified on Page 43 of the
19 order, which says that:

20 "Nothing contained herein shall limit the discretion
21 of the debtors to pay warranty and/or product recall claims.
22 In accordance with those, the Court will limit the right of any
23 party in interest to exercise a post-petition set-off or
24 recoupment against a post-petition payable."

25 And the right goes on to other things. So I mean, I

1 think it's described right in the order.

2 MR. TOERING: Described, but doesn't --

3 MR. BUTLER: Post against post.

4 MR. TOERING: Described, but it doesn't talk about
5 priority. That's my point, Your Honor.

6 THE COURT: Well, I guess it is what it is, including
7 nine four oh four (indiscernible).

8 MR. BUTLER: Is there anyone else who wants to address
9 the Court before we go to the evidentiary record?

10 Your Honor, recognizing that when a debtor asks a
11 bankruptcy court to consider Section 364(d) of the bankruptcy
12 code, we have an affirmative obligation to place evidence in
13 the record, irrespective of the existence of any objection.

14 I'd like, with the Court's permission, to first move
15 the admission of Debtors' Exhibits 1 through 29.

16 THE COURT: All right. That's from that -- the binder
17 you gave me, which 1 through 5 are the final financing
18 documents, 6 through 12 are alternative financing proposals by
19 other groups to the debtor, and 13 through 16 are collateral
20 evaluation materials, 17 through 22 are the prepetition
21 financing documents, 23 through 27 are various Securities and
22 Exchange Commission filings, and the last two are already in
23 the record; those were attached.

24 MR. BUTLER: Yes.

25 THE COURT: Those were summaries of the objections.

1 MR. BUTLER: Yes, Your Honor.

2 THE COURT: So does anyone have any objection to those
3 being admitted? They're admitted.

4 MR. BUTLER: Thank you, Your Honor.

5 (Debtors' Exhibits 1 through 29 admitted into evidence)

6 MR. BUTLER: Your Honor, I think the Court earlier
7 indicated that it would be acceptable for the debtors to
8 present brief proffers? These people are here? Your Honor,
9 they're all here. I'll ask them to stand when I introduce
10 them.

11 The first witness that I would call would be David
12 Resnick. Mr. Resnick is standing in the courtroom and is the
13 debtors' investment banker, Your Honor.

14 THE COURT: Okay.

15 MR. BUTLER: The second witness, Your Honor, we would
16 call is Mr. Scott King. Mr. King? From FTI. And the third is
17 the debtors' chief restructuring officer, Mr. John Sheehan.

18 THE COURT: Okay.

19 MR. BUTLER: Your Honor, in support of the motion, the
20 debtors would offer the testimony of David Resnick, he's the
21 Managing Director of Rothschild, Inc. Mr. Resnick is present;
22 if called, would testify as follows:

23 First, he would testify as to his background and his
24 familiarity with the debtors' operations. He would testify
25 that the debtors' board of directors authorized Rothschild,

1 Inc., its financial advisor and investment banker, to seek
2 post-petition DIP financing from its prepetition secured
3 lenders and other third-party lending institutions.

4 Mr. Resnick would testify that he and other persons,
5 including the debtors' financial advisors FTI Consulting, Inc.,
6 determined that a DIP credit agreement, generally in the terms
7 of that proposed, was critical to the debtors' ability to
8 operate in Chapter 11, and for the debtors' successful
9 reorganization.

10 Mr. Resnick would testify that, in his view, the DIP
11 credit agreement is necessary for the debtors to operate the
12 business. He would testify that he participated in the
13 negotiations of the terms and conditions of the agreement, and
14 that they were negotiated at arm's length and in good faith.

15 Mr. Resnick would testify that, with the credit
16 provided in the DIP facility, it is the debtors' and his view
17 that the debtors would be able to maintain, or should be able
18 to maintain adequate cash balances customary and necessary for
19 companies of this size and in this industry to operate their
20 businesses, in order to preserve the ongoing value of their
21 businesses for the benefits of all parties in interest.

22 Mr. Resnick would testify that -- also testify that
23 he, in participating with the debtors' management team, ran a
24 process to evaluate potential proposals, and met with four
25 major money-settler (sic) institutions, all of whom produced

1 proposals.

2 And, finally, he would testify that the final
3 proposals, and he would identify those proposals as the
4 proposals set forth in Debtors' 1, and the alternative
5 financing proposals not accepted by the debtors as Debtors' 6
6 through 12.

7 Mr. Resnick would testify that when the debtors
8 approached these financial institutions, that they made
9 presentations at the institutions and asked them to provide
10 both priming facilities and non-priming facilities, takeout
11 facilities, in as significant amount of money as the
12 institutions could provide or would provide, but in the case of
13 a takeout refinancing, not less than 4 billion.

14 He would testify that the -- in evaluating these
15 proposals, that the debtors and their financial advisors
16 analyze carefully the structures, discuss the structures with
17 the different institutions, and ultimately reached the
18 determination that there were -- was essentially three gating
19 elements (sic) that, in the view of the debtors and in the view
20 of Mr. Resnick as the debtors' investment banker, were the
21 tantamount considerations in determining what was an acceptable
22 facility that could, in fact, meet the requirements of the
23 debtors' financing needs.

24 And those -- Mr. Resnick would testify that those
25 three factors included execution risk issues, issues relating

1 to size and liquidity of the facility, and issues relating to
2 the economics of the facility proposed.

3 Mr. Resnick would testify as to execution risk that,
4 in his view, this is, if not the largest, among the largest
5 total packages, financing packages sought in the history of the
6 federal system; it's four and a half billion dollars in total.
7 And the debtors recognized that, in trying to do takeout
8 financing of 4 billion, which was the maximum the debtors had
9 obtained among the proposals, Mr. Resnick would testify that,
10 as to the four-billion-dollar facilities, that the debtors took
11 into consideration the complexities of actually executing that
12 takeout facility, which would have been the largest in Mr.
13 Resnick's, at least, experience, ever been considered in the
14 federal bankruptcy system.

15 Mr. Resnick would also testify that he and others at
16 Rothschild, together with members of management, consulted with
17 the senior managers and advisors at the various -- at both J.P.
18 Morgan and at Citibank, in particular, and were advised at the
19 end of the day that those institutions believed that the
20 execution risk was significantly lower in the priming facility
21 than it was in the takeout facility. In addition -- and that's
22 reflected in the rates and in the economic terms and in other
23 provisions that are in the record at this point.

24 Mr. Resnick would also testify that, in the final
25 structure that was agreed, the priming facility generated an

1 additional half a billion dollars worth of liquidity for the
2 company because the other proposals, the non-priming proposals,
3 the takeout proposals, required a pay-down of the prepetition
4 loans in the amount of approximately \$500 million. So that the
5 net available would have been -- in a takeout, would have been
6 4 billion. And in this particular structure, where there was a
7 priming of the two-and-a-half-billion-dollar prepetition, that
8 in fact there would be an additional half a billion or more of
9 additional liquidity available to the company.

10 Mr. Resnick would testify that, in terms of economics,
11 that Rothschild benchmarked economics in this facility against
12 those in its database; that Rothschild, as a part of its
13 ordinary course of business, maintains a database of similar
14 DIP financings; that Mr. Resnick, on behalf of Rothschild, has
15 participated in many refinancings and DIP facilities; and that,
16 when they reviewed their competitive database, that the
17 economics in this database actually were benchmarked extremely
18 favorably to that which was in the marketplace and in
19 appropriate prior DIPs that would be appropriately comparative.

20 Your Honor, and Mr. Resnick would also testify that he
21 has reviewed the terms and conditions of this DIP, and believes
22 that the DIPs -- that he determines that they're fair and
23 reasonable; and, as I indicated, would testify that his opinion
24 is based in part on the database of selected historical DIP
25 facilities that is maintained by Rothschild.

1 In terms of the debtors' needs, Mr. Resnick would also
2 point to the debtors' DIP facility projections, which are
3 included in the record at Debtors' 13, and would point to the
4 fact that the four-and-a-half-billion-dollar facility, based on
5 the forward projections, would suggest that at the end of the
6 period, about a half a billion dollars of liquidity would be
7 available, based on the projections there.

8 Mr. Resnick would testify that, in his experience, a
9 company of this size and complexity, one of the Fortune 50
10 Companies in the country, would, in fact, require a very
11 substantial excess availability in order to operate its
12 business and maintain the confidence of its suppliers and
13 customers.

14 Finally, Mr. Resnick would testify about the structure
15 of Delphi and the structure of this restructuring, and -- which
16 involve a bimodal message, where the company's U.S. entities
17 are involved in this Chapter 11 case, but its global businesses
18 are operating outside of Chapter 11, even though many of the
19 products that it maintains were operated on a horizontal --
20 horizontal, as opposed to vertical, sort of structure,
21 globally.

22 And Mr. Resnick would testify that, in dealing with
23 customers located outside the United States, dealing with
24 suppliers outside the United States, dealing with suppliers and
25 customers that have potential set-off claims and recoupment

1 claims and other actions that could be taken in connection with
2 the company, that it was extremely important in his judgment to
3 -- for stabilizing the business, that the company have the DIP
4 facility that is put in place; and that, in his professional
5 opinion, there was no other facility made available to the
6 debtors that met the debtors' needs and requirements.

7 Your Honor, that would be the sum and substance of Mr.
8 Resnick's testimony.

9 THE COURT: Okay. Does anyone wish to cross-examine
10 Mr. Resnick on his testimony?

11 All right. You can move on to the next witness then.

12 MR. BUTLER: Your Honor, the next witness would be Mr.
13 Scott King. Mr. King, if called to testify, would testify that
14 he is employed by FTI Consulting, Inc. as a Senior Managing
15 Director; that he leads FTI's metals restructuring practice;
16 and that, prior to August of 2002, he was a partner for five
17 years at PriceWATERhouseCooper's business recovery practice and
18 held various positions prior to that date.

19 Mr. King would testify that he has spent more than
20 twenty years of experience in developing and implementing
21 improvement strategies for companies experiencing financial
22 distress, and that his role at FTI is -- in this assignment, is
23 to provide, among other things, on-site assistance at the
24 company, in connection with its Chapter 11 case, and dealing
25 with essential suppliers, and working with the creditors'

1 committee, and working with the company in connection with its
2 relationships with its lenders, its -- the formulation of its
3 forward-going projections, the formulation of its business
4 plan, and other matters.

5 Mr. King would testify that he prepared the document
6 that has been admitted into evidence as Debtors' 14; that that
7 document was prepared by him based on his examination of the
8 debtors' books and records and based on his examination of
9 various reports that were provided to him, including reports
10 that have been admitted into evidence in the debtors' exhibits
11 relating to various valuations of the debtors' collateral.

12 Mr. King would testify that, in his opinion, based on
13 a build-up, and this is on a going-concern basis, that there is
14 as much as \$9.6 billion worth of collateral available to
15 support the adequate protection packages here, which would
16 consist of a two-and-a-half-billion-dollar prepetition lender
17 claim, a two-billion-dollar DIP lender claim, and as much as a
18 five-billion-dollar equity cushion that would be available,
19 based on the book values of PP&E -- property, plant, and
20 equipment -- assessing the valuation of the foreign stock,
21 assessing the valuation of the inventory, and assessing the
22 valuation of receivables and cash and the performance of those
23 assets in the debtors' ordinary course of business on an
24 historical basis.

25 Mr. King would also acknowledge that he examined and

1 relied on the -- in preparing his testimony, relied on the
2 Debtors' 16, which is an appraisal prepared by Hillcall
3 Appraisal Services (phonetic), with respect to Delphi PP&E,
4 which attributed an eight-hundred-and-fifty-million-dollar
5 liquidation value to PP&E, as opposed to the two-point-nine-
6 billion-dollar book value that the debtors currently assign to
7 the PP&E. And if you assigned a liquidation value to PP&E,
8 which Mr. King would suggest is, of all the various collateral
9 items, the one that is the -- that we acknowledge would have
10 perhaps more speculative amounts, in terms of whether
11 liquidation or -- going to turn out to be involved, that if you
12 assign liquidation value to that particular bucket of
13 collateral, that the total value of the collateral will be
14 somewhere in the seven-point-six-billion-dollar range, still
15 providing an ample cushion to the \$4.5 billion worth of
16 prepetition and post-petition proposed claims.

17 Your Honor, Mr. King would also testify similar to Mr.
18 Resnick's testimony with respect to the key items of execution
19 risk, size of the facility, and economics; however, Mr. King
20 would qualify his testimony with a much stronger emphasis on
21 size of the facility. It is Mr. King's view, and in fact he
22 would testify that he was very active during the consideration
23 of these proposals in pushing the company to get as large a
24 facility as the company could procure because it is Mr. King's
25 professional opinion that the company needed as much excess

1 liquidity as possible, given the uncertainties of the
2 automotive sector, the transformation challenges of the
3 company, in terms of the transformation plan and strategies
4 that it has announced publicly, and the extingencies dealing
5 with the sort of bimodal arrangement of trying to make sure
6 that all the customers and suppliers wore a wide hat (sic) and
7 understood the company had all of the liquidity that it
8 reasonably thought necessary to address its issues. So Mr.
9 King would testify that his principle focus was: How much
10 money could the company get? And he viewed that as the most
11 important factor involved here.

12 He would also testify that he participated in the
13 examination of all of the proposals and participated, along
14 with other members of FTI, in aspects of the negotiations of
15 the transaction, and would testify that, in his professional
16 opinion, there was no other financing available to the company
17 that would meet the company's needs and requirements.

18 And that would be the sum and substance, Your Honor,
19 of Mr. King's testimony.

20 THE COURT: Okay. Does anyone want to cross-examine
21 Mr. King on his testimony?

22 All right. Hearing no one, you can move on to the
23 last witness.

24 MR. BUTLER: Your Honor, the last witness who would
25 testify would be Mr. John Sheehan. He would testify that he is

1 the Vice President and Chief Restructuring Officer at Delphi;
2 and he would testify that, from the period of March 4th, 2005
3 through October 8th, he also acted as the Interim Chief
4 Financial Officer, Chief Accounting Officer, and Controller of
5 Delphi Corporation, having joined Delphi in July of 2002 as
6 Chief Accounting Officer and Controller.

7 Mr. Sheehan would describe his role at Delphi as being
8 involved and being tasked with the principal responsibility of
9 all aspects of the company's restructuring; and, as part of
10 those duties, he would say he's responsible for reviewing and
11 analyzing the company's assets and operating and financial
12 strategies, as well as the company's business plan and
13 financial projections, and being responsible for the review and
14 analysis and negotiation of proposals to the company in
15 connection with third-party transactions, including proposals
16 for DIP financing.

17 Mr. Sheehan would testify that he is familiar with the
18 company's cash needs and that he developed that understanding
19 during his period of responsibility at the company as Chief
20 Accounting Officer and Controller, and that he is very familiar
21 with requirements of how the company operates globally, its
22 need for financing, the operations of the enterprise, the need
23 for dealing with central suppliers and customers, and operating
24 the debtors' business.

25 He would testify that he was involved in the process,

1 which resulted in the procurement of the DIP financing that's
2 before the Court, as evidenced in Debtors' Exhibits 1 through 2
3 and 2A. He would describe that that process began earlier this
4 year on a contingency basis, as the board considered various
5 alternatives involving a consensual restructuring of the
6 company's operations in the United States. And as part of that
7 analysis, the company retained financial advisors to assist it
8 and its board of directors in evaluating its options.

9 Mr. Sheehan would testify that Delphi first retained
10 Rothschild, Inc., and Rowatan Associates as the company's
11 financial advisors and investment bankers, and subsequently
12 retained legal counsel, and then retained -- and also retained
13 FTI Consulting.

14 He would testify that, Rothschild was engaged in part
15 to assist the company in soliciting and evaluating various
16 financing proposals, both originally outside of Chapter 11, and
17 ultimately inside of Chapter 11, and that they were tasked with
18 helping him and others at the company negotiate the best
19 financing transaction that would be available to the company to
20 meet its needs, and would also give the company the maximum
21 amount of flexibility when considering various alternatives.

22 Mr. Sheehan would testify that, in August of this
23 year, that he, after consultation with other members of
24 management and a presentation at the Board of Directors of the
25 company, directed Rothschild to begin to reach out and begin a

1 process for considering DIP financing proposals on a
2 contingency basis. That occurred at approximately the same
3 time that the debtors issued public statements about a Path A
4 and Path B sort of, if you will, approach to evaluating and
5 dealing with their legacy liabilities and other -- and
6 portfolio restructuring requirements here in the United States.
7 Those public announcements were made in early August, and Mr.
8 Rothschild -- excuse me -- Mr. Sheehan would testify that
9 Rothschild was asked to begin this contingency process shortly
10 thereafter.

11 Mr. Sheehan would testify that Rothschild, at the
12 direction of the company, approached J.P. Morgan Chase and a
13 number of other global financial institutions, including
14 Citibank, Deutsche Bank, and G.E. Capital, with respect to
15 debtor-in-possession financing. He would testify that that
16 process resulted in a competitive process that concluded in the
17 proposals that had been admitted into evidence as Debtors' 1
18 and Debtors' 6 through 12.

19 Mr. Sheehan would testify that, in negotiating with
20 those lenders, Mr. Sheehan was personally involved in -- along
21 with Rothschild, in describing the company's situation, and was
22 familiar with the materials that were provided in the proposals
23 that were obtained from each of the lenders and the various
24 structures that were involved.

25 Mr. Sheehan would also testify that he was similarly

1 concerned on behalf of the company about the three sort of
2 principal criteria for evaluating these proposals; again, those
3 criteria being the cost of the facility, the structure and size
4 of the facility, and its execution risk.

5 Mr. Sheehan would testify that his weighting of those
6 issues was generally similar to that of his advisors, but that
7 initially he spent some time and focus on the cost of the
8 facility, feeling a need to ensure that the company was
9 appropriately committing its financial resources, and that he
10 was extremely concerned based on his involvement with the
11 essential suppliers and customers of the business on making
12 sure that the proposal could be executed successfully; that
13 those were among his principal focuses.

14 Mr. Sheehan would testify that he participated in the
15 negotiations as a principal from time to time, and throughout
16 the process; that he ultimately recommended to management --
17 the other members of management and the Board of Directors the
18 commitment letter that is set forth at Debtors' 1; that, in Mr.
19 Sheehan's judgment, that proposal was the only financing
20 available to the debtors, that could meet the debtors
21 requirements going forward; that Mr. Sheehan believes that
22 those -- that proposal was negotiated in good faith, on arm's
23 length basis between the company and J.P. Morgan Chase, and
24 eventually Citibank.

25 Your Honor, Mr. Sheehan would also testify that he's

1 familiar with the general terms and conditions of the financing
2 transaction; that, in his judgment, those terms are, in the
3 business judgment of the debtors, fair and reasonable and
4 appropriate under the circumstances; that, in his view, this
5 financing transaction represents the culmination of what Mr.
6 Sheehan viewed to be an exhaustive solicitation process for
7 financing conducted by the company, and that was designed to
8 meet the company's needs in these unusual circumstances.

9 Mr. Sheehan would also testify that he has reviewed
10 the DIP projections that formed the basis of the DIP financing
11 case that was presented to the debtors, and which is
12 represented in part in Debtors' 13; and that he believes the
13 size of the facility, the 4.5 billion overall, is required,
14 again, because of the debtors' contemplated needs as they move
15 through the process.

16 Your Honor, that would be the sum and substance of Mr.
17 Sheehan's testimony.

18 THE COURT: All right. Does anyone wish to cross-
19 examine, Mr. Sheehan?

20 All right. Hearing no one, I'll accept his testimony.

21 MR. BUTLER: Your Honor, that would represent the
22 evidentiary record that the debtors' have:

23 The testimony of those three witnesses and the twenty-
24 nine exhibits admitted into evidence, and we would rest on that
25 record.

1 THE COURT: Okay. I'm assuming, in light of the first
2 part of the hearing, that no one else has any evidence they
3 want to submit? Okay. I'll close the evidentiary portion of
4 the hearing then.

5 MR. BUTLER: Your Honor, and given the presentation we
6 had earlier, I think at this point we would simply rest on the
7 papers. There's a proposed order we'd like Your Honor to
8 consider, and we would intend to reflect the changes that we
9 have discussed on the record that were indicated to actually
10 be changes to the order. We have -- while we know others will
11 want to look at it, we have committed to the creditors'
12 committee that they and we will take our time this evening to
13 get it right. We have language, much of which we've read into
14 the record. There is not much actually left to be done. But
15 we want to make sure that we have a chance to fly-spec. the
16 order, and we'll get it over -- the committee and the debtors
17 will get the order over to you in the morning.

18 We would like, Your Honor, if you're inclined to
19 improve the financing, to approve it on the record today, so
20 we'd be in a position to announce publicly it's been approved,
21 and also to make clear that, to the extent somehow there is
22 some disagreement in what the form of the order says, all that
23 would be brought back to Your Honor tomorrow is a settlement of
24 the order, rather than a revisiting of the merits in this case.

25 THE COURT: All right. I do approve the financing and

1 adequate protection provisions set forth in the black-lined
2 order, as modified and clarified on the record at today's
3 hearing. And the record will reflect that the parties are
4 moving forward to complete the order in reliance on that
5 ruling, and that all I'm looking for is an order that embodies
6 the agreed order, as set forth on the record.

7 It is clear to me that this is, at this point, a
8 consensual DIP financing and adequate protection order, which I
9 think -- and I extend praise to all of the professionals
10 involved in resolving the issues, which were not, in all
11 respects, easy to resolve, and to resolve them fairly and
12 creatively. And I also applaud the fact that the various
13 parties in interest were each prepared to sacrifice important
14 elements of their positions to get to that point.

15 Based on the proffered testimony, I find that the DIP
16 agreement was negotiated at arm's length after a competitive
17 process and in good faith; and, therefore, merits treatment
18 under Section 364(e) of the Bankruptcy Code.

19 And I also further find that the debtors have
20 satisfied their burden under Section 364(c) and 364(d) for the
21 priority claims, super-priority claims, and liens and priority
22 liens provided in this order.

23 And one of my original reactions to this motion was to
24 question whether, in fact, the debtors needed such a large
25 facility. I'm hopeful that they will not need to draw down on

1 it significantly, but I am now convinced that the facility
2 adequately satisfies the debtors' needs and provides them with
3 sufficient and abundant availability to conduct their
4 bankruptcy case; and, more importantly, to conduct their
5 businesses in the ordinary course.

6 So I'll look forward to getting the order, and we'll
7 review it in light of the record.

8 MR. BUTLER: Your Honor, thank you very much, and
9 thank you to you and everyone in chambers for the assistance
10 over the last few days as we've moved forward towards this
11 hearing.

12 Your Honor, I would point out that Matter 18 on the
13 agenda, which is the cash management matter, in light of the
14 disposition of this order and the agreement of the committee,
15 I'd ask Your Honor to approve the cash management order as
16 negotiated with the Pension Benefit Guarantee Corporation on a
17 final basis.

18 THE COURT: And the committee.

19 MR. BUTLER: And the committee.

20 THE COURT: So --

21 MR. BUTLER: The committee withdrew its objection to
22 that matter. There's --

23 (Counsel confer)

24 MR. BUTLER: Okay. You know, we'll be happy to submit
25 the order -- and we'll submit the order tomorrow morning.

1 THE COURT: All right. But it will reflect the same
2 language with respect to the inter-company loan treatment as
3 the DIP order.

4 MR. BUTLER: Yes, Your Honor.

5 THE COURT: Okay. That's fine, and I will approve
6 that.

7 MR. ROSENBERG: Yes. And I'd like to add, Your Honor,
8 the review language (indiscernible) --

9 THE COURT: Oh, yes, that goes without saying. Okay.

10 MR. FUSCO: Your Honor?

11 THE COURT: Yes?

12 MR. FUSCO: This is Timothy Fusco representing Ford
13 Motor Company. Will Mr. Butler submit a copy of the revised
14 order to the objecting parties, as well?

15 MR. BUTLER: Well, there's fifty or sixty objecting
16 parties. I mean, we want to be able to submit -- use the
17 committee to submit this in accordance with the record.

18 THE COURT: I think -- again, I don't want this to
19 turn into a negotiating session. It really is to set forth
20 what is set forth on the record.

21 MR. FUSCO: (Indiscernible).

22 THE COURT: But give me just a second. I think -- I
23 don't have any problem with it. I would like someone to e-mail
24 it to the objectors, if you can -- if you have the e-mail
25 address. If you don't, I would instruct the objectors to

1 provide -- who? Who should they send the e-mail address to?

2 MR. BUTLER: You know, one of the -- why don't we just
3 make it easy, and I'll give it to the right people. Send it to
4 JButler, J-B-u-t-l-e-r, @Skadden.com. Okay?

5 (Laughter)

6 MR. BUTLER: And I'll make sure it gets to where it
7 needs to go.

8 THE COURT: All right. But, again, I intend to review
9 it in light of today's record, and I think it's important to
10 get it in tomorrow, by the end of the day tomorrow. So rather
11 than negotiate provisions, if there's something that you think
12 that has been left out, you can send me a short letter to that
13 effect, but I don't want to get people hung up on negotiating
14 language again.

15 MR. FUSCO: And again, thank you.

16 THE COURT: Mr. Ziman, one brief thing. With the
17 waiver language -- you don't have to stand up. The waiver
18 language, in light of the fact that this debt is traded a lot,
19 I just urge the agents that somehow keep a record of what
20 waivers and elections people have made, so that when it's
21 traded, and sometimes traded in pieces, you don't have
22 confusion at the end of the case.

23 MR. ZIMAN: We will, Your Honor.

24 THE COURT: Okay. All right. Thank you.

25 MR. BUTLER: Your Honor, thank you very much. That

1 completes the agenda for today.

2 COUNSEL: Thank you, Your Honor.

3 (Proceedings concluded at 3:50 p.m.)

4 CERTIFICATION

5 I certify that the foregoing is a true and accurate transcript
6 from the electronic sound recording of the proceedings in the
7 above-entitled matter.

8 October 31, 2005

9 Coleen Rand
10 Rand Transcript Service, Inc.

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